

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

MARNIE O'BRIEN,	.	Case No. 2:19-cv-06078-JMG
	.	
Plaintiff,	.	
	.	U.S. Courthouse
v.	.	504 W. Hamilton Street
	.	Allentown, PA 18101
THE MIDDLE EAST FORUM	.	
et al.,	.	
	.	
Defendants.	.	
	.	August 2, 2021
. . . . .	.	9:32 a.m.

TRANSCRIPT OF TRIAL DAY THREE  
BEFORE HONORABLE JOHN M. GALLAGHER  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff:	ERICA A. SHIKUNOV, ESQ. POND LEHOCKY STERN GIORDANO 2005 Market Street, 18th Floor Philadelphia, PA 19103
	SUSAN C. KEESLER, ESQ. DEREK SMITH LAW GROUP PLLC 1835 Market Street, Suite 2950 Philadelphia, PA 19103

For the Defendants:	MARGARET M. DIBIANCA, ESQ. JAKOB F. WILLIAMS, ESQ. CLARK HILL PLC Two Commerce Square 2001 Market Street, Suite 2620 Philadelphia, PA 19103
	JONATHAN R. CAVALIER, ESQ. COZEN O'CONNOR 1900 Market Street Philadelphia, PA 19103

Audio Operator:	CHRISTINE C. STEIN
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TRANSCRIBED BY:	NEAL R. GROSS
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EXHIBITSID.    EVD.

1           THE COURT: It is nice to everybody. Slightly  
2   eventful weekend, right? We have a witness who's -- at least  
3   at the moment -- unavailable due to illness.

4           MS. SHIKUNOV: Well, she's available as the Court  
5   sees fit. We did -- it was confirmed, a positive diagnosis.

6           THE COURT: Okay, okay.

7           MS. SHIKUNOV: I can provide the medical  
8   documentation to the Court if the Court finds it necessary.

9           THE COURT: I do not.

10          MS. SHIKUNOV: Okay.

11          THE COURT: And if Counsel wants to see it, it's up  
12   to them.

13          MS. SHIKUNOV: So it would be our proposal that she  
14   be permitted to teleconference from her current location. She  
15   is willing to come here. I will tell the Court -- selfishly,  
16   being pregnant, I'm a little uncomfortable with that.

17          THE COURT: Understood, understood.

18          MS. SHIKUNOV: But we will defer to the Court.

19          THE COURT: And -- and I did get to see your email as  
20   well.

21          MS. DIBIANCA: Yes, we do not want her to come in-  
22   person.

23          MS. SHIKUNOV: Yes.

24          THE COURT: Yes. No, that's fine. And I appreciate  
25   that. And -- and there's -- there's some things that have to

1 happen on the technical side that Ms. Stein -- we've dealt with  
2 before in other cases. So we'll make that work. I -- are you  
3 anticipating her? When? Tomorrow, or --

4 MS. SHIKUNOV: We were going to try to call her this  
5 afternoon, but we just didn't want -- we may -- we switched it  
6 around just because we didn't want to put pressure on the  
7 Court. And in terms of setting up technology or however that  
8 would happen --

9 THE COURT: Okay.

10 MS. SHIKUNOV: -- we just didn't want to waste -- so,  
11 definitely tomorrow.

12 THE COURT: All right. And you probably have  
13 already, but just stay in touch with Ms. Stein and she'll  
14 figure out how we get that done.

15 MS. SHIKUNOV: Okay.

16 THE COURT: Okay? Sound good, Christine?

17 MS. STEIN: That's perfect, thank you.

18 THE COURT: All right. So I'll -- I'll sign that  
19 order at our next break. And -- and we're starting with the  
20 Plaintiff's expert? Is that what we're doing this morning?

21 (Simultaneous speaking.)

22 MS. SHIKUNOV: Yes, Your Honor.

23 THE COURT: Okay. I'm going to give just the -- it's  
24 -- it's a -- you know, the very general Third-Circuit  
25 instruction. It doesn't even use the word expert, but it --

1 you know, it touches on some of the consideration that the jury  
2 has -- really with all witnesses, but the -- in the drafting of  
3 the Third-Circuit's model instruction they've sort of taken  
4 that word out of my mouth. So -- that's what I'll read, all  
5 right?

6 MS. DIBIANCA: We had one other housekeeping before  
7 the jury is called in, I believe.

8 THE COURT: Talk to me.

9 MS. DIBIANCA: Okay. And Erica -- Ms. Shikunov is up  
10 to speed. This is not a surprise, but she's -- she will have  
11 the opportunity to object. So we -- one of our witnesses is  
12 the recruiter, People Share. We learned last week that the  
13 person who is supposed to be testifying, Mr. Beady (phonetic)  
14 is on vacation and unavailable. And so in the course of trying  
15 to figure out how to deal with that, we -- they provided us  
16 with documents that we did not receive pursuant to our subpoena  
17 request which was issued about -- more than a year ago. So now  
18 we have received, as of Friday, documents that we did not have  
19 access to before. It's her People Share file, which is --  
20 probably -- I'm going to call it 10-ish pages. I provided this  
21 to Ms. Shikunov on Friday and said that -- explained the  
22 circumstances and provided the communications by which I  
23 received the -- the documents. And we'd like to use it as an  
24 exhibit. Obviously she is going to -- or she has --  
25 (inaudible) provide her -- you know, requires it, that she can

1 object to it, but I just wanted to let you know the  
2 circumstances by which we received the document.

3 THE COURT: Okay. So in short, there -- there -- it  
4 looks like there may be a substitute witness, but also an  
5 additional exhibit?

6 MS. DIBIANCA: I won't be calling a substitute  
7 witness.

8 THE COURT: Okay.

9 MS. DIBIANCA: There's not a person with personal  
10 knowledge, so I won't be able to call a substitute, yes.

11 THE COURT: Okay. And have you had a chance to look  
12 at that --

13 MS. SHIKUNOV: I did, and we do object because we did  
14 not receive these -- we're receiving new exhibits in the middle  
15 of trial. This isn't an affidavit. This isn't a deposition.  
16 And I don't think it's an appropriate substitute for the  
17 witness.

18 THE COURT: Well I'm -- maybe if -- is this something  
19 you can give us a copy of to see it? Just --

20 MS. DIBIANCA: Yes.

21 THE COURT: -- and I'm not going to rule now, but if  
22 you could share that with Mr. Fischer (phonetic). Is that --  
23 you have a copy of your own?

24 MS. DIBIANCA: Yes -- yes, yes.

25 THE COURT: Okay, great. Just hang on to that.

1 MS. DIBIANCA: And if it's necessary I could request  
2 that People Share provide a witness to authenticate the  
3 documents. But I just -- I -- honestly, I didn't think that  
4 that was necessary in light of the -- uncontroversial nature of  
5 them.

6 THE COURT: Okay. I'll just -- I'll need some time  
7 to look at it --

8 MS. DIBIANCA: Absolutely.

9 THE COURT: -- and then we can discuss at a break,  
10 and -- and I'm assuming this would be during the Defendant's  
11 own case in chief?

12 MS. DIBIANCA: I would actually intend to use it on  
13 cross since I'm not going to call the recruiter.

14 (Simultaneous speaking.)

15 THE COURT: So the cross of the Plaintiff?

16 MS. DIBIANCA: Yes.

17 THE COURT: All right. So we -- we'll have to make  
18 the decision quickly. I -- I'll need to take a look at it,  
19 okay?

20 MS. DIBIANCA: Absolutely.

21 THE COURT: All right. Anything else?

22 MS. DIBIANCA: No, I believe so.

23 MS. SHIKUNOV: I don't think so, Your Honor.

24 THE COURT: Okay. All right, if we can bring the  
25 jury in, that would be terrific.



1 (Pause.)

2 THE CLERK: All arise.

3 (JURY ENTERS COURTROOM.)

4 THE COURT: Good morning, ladies and gentleman.  
5 Please be seated. Welcome back.

6 (Pause.)

7 THE COURT: Folks, you might recall that on Friday  
8 after the completion of the direct examination of Mr. O'Brien,  
9 I mentioned that we were going to go somewhat out of order this  
10 morning. And that's still our plan. So you will be hearing  
11 testimony from a Plaintiff's witness, Kendra Kubala. That will  
12 be the next thing we do. As I mentioned Friday, there's  
13 nothing unusual about this. We -- we frequently do have to go  
14 out of order when we're trying to accommodate witnesses'  
15 schedules and do that whole balancing act.

16 So for -- for this witness, I do want to give you a  
17 brief instruction. I hope everyone had a good weekend.

18 (Laughter.)

19 THE COURT: Shortly you will hear testimony you may  
20 consider her qualifications, the reasons for her opinions, and  
21 the reliability of the information supporting those opinions,  
22 as well as the fact that as I previously mentioned for weighing  
23 the testimony of any other witness. The opinion of Kendra  
24 Kubala should receive whatever weight and credit, if any, you  
25 think appropriate given all of the evidence in this case.

1           In deciding whether to accept or rely upon the  
2   opinion of Kendra Kubala you may consider any bias that she may  
3   have, including any bias that may arise from evidence that she  
4   has been or will be paid for reviewing the case or testifying.

5   But again, this -- this witness's testimony should also be  
6   considered in -- in regard with the factors that you would use  
7   when considering the testimony of any witness in the case. And  
8   the -- the determination of how much weight and credit to give  
9   to each witness in this case belongs individually to each of  
10   you. Okay? That's our brief instruction and we're ready to  
11   resume testimony.

12           MS. KEESLER: Thank you, Your Honor. The Plaintiff  
13   would call Dr. Kendra Kubala to the stand.

14           THE COURT: Please approach.

15           (Pause.)

16           THE COURT: Hello, good morning.

17           (Pause.)

18           KENDRA KUBALA, WITNESS, SWORN

19           PARTICIPANT: Please state and spell your name for  
20   the record.

KUBALA-11

1 THE WITNESS: Kendra Kubala, K-E-N-D-R-A K-U-B-A-L-A.

2 PARTICIPANT: Please be seated.

3 (Pause.)

4 DIRECT EXAMINATION

5 BY MS. KEESLER:

6 Q Good morning, Dr. Kubala.

7 A Good morning.

8 Q Dr. Kubala, can you begin by telling the jury about your  
9 education background?

10 A Yes. I have my bachelor's degree from Salisbury  
11 University in 2004. I got my master's degree in 2007 from  
12 Adelphi (phonetic) University in New York. And then I got my  
13 doctorate in psychology from 2012 from Immaculata University in  
14 Pennsylvania.

15 Q Dr. Kubala, at Salisbury University, what was your major?

16 A Psychology.

17 Q And at Adelphi University where you received your master  
18 of arts, what was your major?

19 A General psychology.

20 Q Okay. And then you mentioned -- or testified that you got  
21 your doctor of clinical psychology. Can you explain to the  
22 jury what clinical psychology is?

23 A Clinical psychology is the study and research of how we  
24 act and how we feel and how those two things interact with one  
25 another. The reasons we may engage in certain behaviors,

1 different symptoms we may experience.

2 Q Okay. And how many years were you at Immaculata  
3 University?

4 A Five.

5 Q Okay. And in those five years -- can you take us through  
6 those years, as to what you completed?

7 A Yes. The first three years are mainly in-classroom  
8 instruction. There's a lot of lectures that you go to, maybe  
9 some off-site events that you're going to for different  
10 trainings. The -- those are the first three years. The fourth  
11 year is -- and then within the third year, into the fourth  
12 years, you do two practicum experiences. So the goal of a  
13 practicum is to go off site to a location that has a  
14 relationship with the university and gain some hands-on  
15 experience. One is more diagnostic geared. So you're looking  
16 at different people with a variety of presenting issues. And  
17 your job is to diagnose those individuals.

18 The second practicum is much more of a therapeutic  
19 practicum. So you're learning hands-on, different therapeutic  
20 techniques and different approaches and you're implementing  
21 them with the patient roster you're given. The fourth year you  
22 do an internship. So that is a pre-doctoral internship and you  
23 are again off site -- once again, with a relationship between  
24 the school and the location. And you are either being  
25 supervised by a licensed psychologist, or you're working

1 directly in the room with the psychologist and the team. And  
2 then eventually you're given the opportunity to do those same  
3 things yourself. So the goal is for you to have the training -  
4 - the hands-on training, and then you graduate to doing the  
5 same things you were observing. You do them yourself.

6 And then the fifth year you're doing your dissertation and  
7 then you're -- you graduate.

8 Q Okay. So I'd like to talk about the -- I believe you  
9 discussed it was the third year where you do your practicum.  
10 So for your third year, which practicum did you do?

11 A I started my diagnostic program at the Joseph J. Peters  
12 Institute in Philadelphia. The Joseph J. Peters Institute is  
13 100-percent trauma-based. So we worked with a clientele from  
14 the ages of three up to 70s. And they were 100-percent people  
15 who had experienced a sexual trauma.

16 Q Okay. And during your practicum -- and I am going to use  
17 the acronym JJPI just because it's easier to say. During your  
18 practicum at JJPI, what were you involved in?

19 A I did predominantly evaluations to begin with. So we  
20 would -- it was a forensic-involved experience, meaning that  
21 all of -- most of the people that we had were involved in the  
22 court system in some way. Whether there was allegations of  
23 abuse or somebody had been charged with an assault situation.  
24 I also worked with the offenders. We would communicate with  
25 the court. The person would come in. I would do a full

1 evaluation on the individual and then I would work with the  
2 treatment team to determine how to move forward with treatment  
3 for the individual.

4 Q And while you were at this practicum, were you supervised  
5 under a supervisor?

6 A Correct.

7 Q Okay. And would that supervisor be a licensed clinician  
8 or a psychologist?

9 A Both a licensed psychologist and a psychiatrist.

10 Q Okay. And what kinds of evaluations were these?

11 A They were called biopsychosocial evaluations. Basically  
12 what that means is you're getting a full background of the  
13 person. So you're looking at biological factors, social  
14 factors, and psychological factors. So you're getting a full  
15 structured interview. You're also gaining information from --  
16 maybe collaborative reports -- and you're also doing measures  
17 and psychological tests.

18 Q I now want to have you discuss the second practicum that  
19 you did. Where is that you did your second practicum?

20 A It was the Philadelphia School of Psychoanalysis.

21 Q Okay. And what were you involved in there?

22 A That was my psychotherapeutic practicum experience. So  
23 the majority of that there was -- somebody else was doing the  
24 testing and diagnosing. And then they would move the person on  
25 to their therapy needs that were recommended, and I would

1 provide the therapy under the supervision of a licensed  
2 psychologist.

3 Q One moment. Okay, you then testified about your fourth  
4 year regarding your pre-doctoral internship. Where is it that  
5 you did your pre-doctoral internship?

6 A I was at MercyFirst in Syosset, New York.

7 Q And how long was that pre-doctoral internship?

8 A One year.

9 Q Okay. And does the pre-doctoral internship have to be  
10 accredited by the American Psychological Association?

11 A Ideally, yes.

12 Q Okay. Was your pre-doctoral internship APA accredited?

13 A Yes.

14 Q And can you please describe your pre-doctoral internship  
15 for MercyFirst?

16 A It was a residential treatment facility for teens and  
17 younger children. These were young people who were either  
18 dependent or delinquent -- meaning they were dependent in that  
19 they had nowhere else to go. So we sort of became their  
20 guardians for the State. Or they were delinquently involved,  
21 which meant that these were young people who had gotten  
22 involved in the court system and it was no longer safe for them  
23 to reside in a residential setting. So they were placed at a  
24 residential treatment facility.

25 Q Okay. And during this pre-doctoral internship -- was this

1 a clinical psychology pre-doctoral internship?

2 A Yes.

3 Q Okay. At this pre-doctoral internship, did you conduct  
4 evaluations?

5 A Yes.

6 Q Did you also provide therapy?

7 A Yes.

8 Q What kind of evaluations did you administer?

9 A The same biopsychosocial evaluations that I described  
10 previously.

11 Q Okay. And was this all conducted under the supervision of  
12 a licensed psychologist?

13 A Yes.

14 Q Okay. And how many hours did you have to complete for  
15 this pre-doctoral internship?

16 A Fifteen hundred hours.

17 Q And did you receive your certificate of completion for  
18 your pre-doctoral internship?

19 A Yes.

20 Q Okay. And what was the focus of these evaluations at  
21 MercyFirst?

22 A The focus was to compile the various documentation that we  
23 were receiving from -- because these were younger people --  
24 school, because they were involved in court happenings in some  
25 way. We would compile all of those documents, complete some



1 psychological testing, complete a structured interview, and  
2 generate a report that included diagnoses and recommendations  
3 for treatment.

4 Q Okay. At MercyFirst were you involved in conducting  
5 evaluations and therapy with respect to teens and children --  
6 teens and children who were subjected to sexual trauma as well?

7 A Yes.

8 Q Okay. And then you mentioned -- give me one moment. In  
9 your fifth year you present a dissertation, correct?

10 A Correct.

11 Q Can you describe to the jury what a dissertation is?

12 A A dissertation is sort of the culmination of your entire  
13 experience as a doctoral student. So you complete -- you  
14 create a research study, basically. You create the question  
15 you want answered. You create your hypothesis, which is what  
16 you hope to happen. Then you complete the research methods.  
17 You find your participants. You engage in all of that  
18 strenuous activity. You administer, test -- I'm sorry. You  
19 administer, score, and interpret those results. And you  
20 compile them into a conclusion and present your research in a  
21 bound copy. And you have to present it in front of a team of  
22 both licensed psychologists and different administrators at the  
23 university. And they have to decide if you've done an  
24 acceptable job.

25 Q Okay. And just generally what was your dissertation

1 about?

2 A Some vicarious (phonetic) trauma.

3 Q And -- I don't know if I'm using the correct terminology -  
4 - but did you pass in presenting your dissertation?

5 A I did.

6 Q Okay. So after you completed your doctor of clinical  
7 psychology at Immaculata University, did you -- I guess, what  
8 further requirements did you have to undertake to become a  
9 practicing psychologist?

10 A So after you graduate you do one year of post-doctoral  
11 training. So I chose to go back to the Joseph J. Peters  
12 Institute because, understandably, it's a fairly small world in  
13 terms of working with such young people -- and exclusively  
14 people who have dealt with trauma -- specifically sexual  
15 trauma. So there are only a few institutes that really focus  
16 on that.

17 I decided to go back to JJPI for my year of post-doc,  
18 which is also 1500 hours, and I completed that year. And then  
19 at the end of that you take what's called the EPPP, which is  
20 the Exam for the Practice of Professional Psychology. It's a  
21 nationwide exam. Many people consider it the boards of  
22 psychology. You sit for that exam. You have to wait to pass  
23 that. And then you take the jurisprudence exam for the state  
24 that you want to be licensed in. So I have two -- New York and  
25 Pennsylvania.

1 Q And did you pass that EPPP?

2 A I did.

3 Q Okay. The -- I just want to talk about your post-doc at  
4 JJPI. How long was that post-doc?

5 A One year.

6 Q Okay. And I understand that you returned to JJPI. What  
7 type of work did you do during your post-doc?

8 A A little bit of everything. Evaluation, therapy --  
9 because I had been there for previous stints for different  
10 training and been -- I had been an employee there, I was very  
11 fortunate to have the experience of working with a variety of  
12 trauma-influenced populations.

13 Q During your time at JJPI for your post-doc, did you also  
14 work with adult sexual offenders?

15 A I did.

16 Q Okay. And what were you involved in when you worked with  
17 the adult sexual offenders?

18 A They were more heavily court-involved. Understandably,  
19 they either had -- excuse me -- probation or parole officers  
20 with whom I had to be in contact. I completed evaluations on  
21 them as well as completed individual therapy and group therapy  
22 for those individuals.

23 Q And what type of evaluations did you conduct with respect  
24 to that group?

25 A It would, again, be a biopsychosocial.

1 Q Okay. Did you also work with survivors of sexual trauma  
2 during that post-doc?

3 A Yes.

4 Q Okay. And what were you involved in while working with  
5 the survivors?

6 A I did pretty much the same -- evaluations, individual  
7 treatment, group therapy. There was also a court in  
8 Philadelphia that was specifically geared toward working with  
9 women who had been -- who had experienced prostitution. So I  
10 would often go to that -- those court hearings just to attest  
11 to their attendance and their participation.

12 Q You mentioned the requirements of a licensing exam, and  
13 then the jurisprudence. As part of, I guess, maintaining your  
14 license as a psychologist, what else do you have to undergo to  
15 maintain your license?

16 A Every state is a little different in their requirements.  
17 But for Pennsylvania and New York -- Pennsylvania, every two  
18 years you have to complete 30 hours of what are called C-E-Us.  
19 They're continuing education units. And New York is 36 hours  
20 for a three-year period. So they have specific requirements  
21 with what CEUs you can take. You have to take CEUs in ethics,  
22 child abuse reporting, and suicidality assessment. But other  
23 than that, you can enroll in different CEUs that are of  
24 interest to you.

25 Q Okay. And -- do you take those CEUs to maintain your

1 license for both PA and New York?

2 A Yes -- yes.

3 Q Okay. Now what is your current position, Dr. Kubala?

4 A I'm a psychologist in private practice.

5 Q How long have you been in private practice?

6 A It's been about five years now.

7 Q And what type of individuals do you work with in your  
8 private practice?

9 A Those who have experienced trauma.

10 Q Is your practice, I guess, focused on sexual trauma only?

11 Or do you also see individuals for other issues?

12 A Almost -- 100-percent trauma-based, but not 100-percent  
13 sexual trauma.

14 Q What other types of traumas?

15 A I've had people who have experienced car accidents,  
16 somebody who was bitten in the face by a dog -- those sort of  
17 traumatic events.

18 Q Okay. And how is that these patients come to you?

19 A Mostly through word of mouth. I've been fortunate enough  
20 to have many referrals. Otherwise there's a website called  
21 Psychology Today, and that's a location where you can go and  
22 parcel out the specifics of what you want. If you want  
23 somebody who accepts a particular insurance, or if you want  
24 somebody who specializes in a particular field, you would go to  
25 Psychology Today, and it has a roster of different

1 psychologists.

2 Q Okay. So for these individuals that you work with, do you  
3 provide therapy?

4 A Yes.

5 Q Okay. And what theoretical approach do you implement for  
6 these individuals?

7 A Cognitive behavioral therapy -- more specifically, trauma-  
8 focused cognitive behavioral therapy.

9 Q Okay. I'm going to use the acronym CBT as we refer to  
10 this.

11 A Yes.

12 Q The CBT -- can you just describe for the jury what that  
13 means? What the approach is?

14 A Cognitive behavioral therapy is most predominantly used  
15 when you are engaging in therapy with trauma survivors as a --  
16 as a basis of treatment. It basically is sort of what the  
17 words stand for. It's cognitive behavioral therapy. So how  
18 your cognitions, or thoughts, impact your behavior or actions -  
19 - and vice versa.

20 Q In addition to your private practice, Dr. Kubala, have you  
21 ever been hired for legal cases?

22 A Yes.

23 Q Okay. About how many legal cases per year do you handle?

24 A Approximately eight.

25 Q Okay. And about -- what types of claims are presented to

1 you with respect to these legal cases?

2 A Mainly personal injury.

3 Q And in these personal injury cases, what are you hired to  
4 assess?

5 A The level of emotional distress and how the incident  
6 continues to impact the individual. As well as what can be  
7 implemented to reduce that experience.

8 Q What percentage of your work constitutes work for legal  
9 cases?

10 A Work? Or --

11 Q Yes.

12 A About 20 percent, maybe.

13 Q Okay. And it -- what percentage of your income is derived  
14 from legal cases?

15 A About 20 percent.

16 Q Okay. Can you describe your work experience prior to your  
17 private practice?

18 A Sure. I was the director of DelStar (phonetic), which is  
19 a program -- a nonprofit in Philadelphia that works with  
20 adjudicated youth. Meaning they've been in the legal system,  
21 they've been found guilty but on a juvenile level. So a huge  
22 component of that is getting these young people treatment. So  
23 they're sent to me from court. I oversaw the therapist who  
24 directly treated them and evaluated them. And we would report  
25 back to the court on a daily basis.

1 Q And how long were you the director of the DelStar program?

2 A Five years.

3 Q You testified that you also evaluated them. What kind of  
4 evaluations did you administer?

5 A We would administer different -- depending on the specific  
6 referral questions, sometimes the court would have a specific  
7 question that would center upon whether or not this young  
8 person could safely live in the community. So that might  
9 involve a personality inventory. Most of the time it involved  
10 a trauma symptom checklist because these individuals -- aside  
11 from being involved in the juvenile system, were also survivors  
12 of trauma themselves. So we needed to assess that as well to  
13 determine how it impacted their current behavior.

14 Q Okay. So is it safe to say that your work involves  
15 assessing emotional distress as well?

16 A Yes.

17 Q As well as psychological -- and hopefully I pronounce this  
18 correctly -- sequelae?

19 A Yes.

20 Q Okay. Can you describe to the jury what psychological  
21 sequelae means?

22 A Psychological sequelae is the more formal experience of  
23 emotional distress. So as humans we all have emotional  
24 distress. We go through stressful moments. We go through  
25 different life events. When those become more pervasive --



1 when they become more frequent, more intense in symptomology,  
2 that's when it moves on to the psychological sequelae realm.

3 Q Okay. One moment.

4 (Pause.)

5 Q Other than your director position at the DelStar -- was  
6 that in Philadelphia? I apologize.

7 A Yes.

8 Q Okay. In addition to your director position at the  
9 DelStar program, what other work experience did you have prior  
10 to that?

11 A I worked at JJPI. Aside from when I was a student there,  
12 I was invited to be a full-time employee. So I completed the  
13 same sort of things that I was doing as a student after I  
14 completed my time there. So I was doing evaluations,  
15 individual therapy, group therapy.

16 Q Okay. And how long were you doing that for?

17 A Gosh, at least three years.

18 Q Okay. Would it reflect your recollection if I were to  
19 show you a copy of your CV?

20 A Please.

21 MS. KEESLER: May I -- may I approach the Witness?

22 THE COURT: Certainly.

23 MS. KEESLER: Thank you.

24 (Pause.)

25 THE WITNESS: Thank you.

1 BY MS. KEESLER:

2 Q Dr. Kubala, is that a copy of your CV, or curriculum  
3 vitae?

4 A Yes, it is.

5 Q Okay. And after reviewing your CV, how long did you work  
6 at JJPI?

7 A As an employee -- as an evaluator, I was there for a  
8 little over a year -- aside from the training I did as a  
9 practicum student and post-doc.

10 Q Okay. And then what other employment did you have prior  
11 to private practice that you haven't already testified about?

12 A The same location that I became the director of, I was  
13 also a clinician years prior. So I worked at that DelStar  
14 program as a clinician who was implementing the evaluations and  
15 doing therapy.

16 Q And how long were you in that position for?

17 A Just about two years. Little over two years.

18 Q Okay. And then I noticed that you also have here that you  
19 were an intake coordinator, slash group facilitator, for the  
20 Halts (phonetic) Program?

21 A Correct.

22 Q What years were you employed there?

23 A 2006 to 2007.

24 Q And what type of work were you involved in there?

25 A The HALT Program stood for Help Abusers Learn Together.

1 This was a program that focused on domestic violence. So these  
2 were the offenders of domestic violence and they were court  
3 ordered to attend group therapy -- also called a BIP, a B-I-P,  
4 which is a batterers' intervention program. So I began as the  
5 intake coordinator there. So I would do sort of a cursory  
6 background under the supervision of other licensed therapists.  
7 And then I would provide group therapy.

8 Q How long were you in that position for?

9 A Approximately one year -- a little over.

10 Q Okay. I also noticed on your CV that you were a medical  
11 reviewer for Health Line Media, is that correct?

12 A Correct.

13 Q When did you start that position?

14 A I started in March of this year.

15 Q Okay. Could you please describe for the jury what that  
16 work entails?

17 A As a medical reviewer, there are different authors who  
18 present on a variety of topics. So an author will write the  
19 piece and it will be sent to me, and my job is to check that  
20 the research that they're attaching to it is relevant, timely,  
21 appropriate, and that there's no misleading information in the  
22 actual article.

23 Q Dr. Kubala, have you ever previously been qualified as an  
24 expert in the area of assessing emotional distress?

25 A Yes.

1 Q And do you recall what -- for what court or jurisdiction?

2 A It was the Court of Common Pleas in Philadelphia.

3 Q And do you recall when you were qualified as an expert?

4 A 2018 -- spring, summer 2018.

5 Q Okay. Have you ever been disqualified as an expert?

6 A I have not.

7 MS. KEESLER: All right, thank you Dr. Kubala. I now  
8 offer Dr. Kubala for cross under qualifications.

9 CROSS EXAMINATION

10 BY MR. CAVALIER:

11 Q Just briefly, Doctor, you are not licensed in forensic  
12 psychology, correct?

13 A Correct.

14 Q And you are not trained in forensic psychology, correct?

15 A Correct.

16 MR. CAVALIER: That's all I have.

17 THE COURT: Thank you, Mr. Cavalier. And I will  
18 grant your application and we recognize the Witness as an  
19 expert in assessing emotional distress -- is -- is --

20 MS. KEESLER: Yes.

21 THE COURT: Is -- that's the discipline for which she  
22 is offered?

23 MS. KEESLER: Well I am offering her as an expert in  
24 the field of psychology.

25 THE COURT: More generally?

1 MS. KEESLER: Yes.

2 THE COURT: That is also granted. Ladies and  
3 gentlemen, just briefly, the law permits than an expert, once  
4 qualified, may offer an opinion of the area of expertise. And  
5 as we discussed in prior instruction, it's for the jury to  
6 determine how much weight and credit – credit, if any, to give  
7 to the testimony of each witness, including a witness who was  
8 qualified as an expert before the court.

9 Okay, thank you.

10 MS. KEESLER: Dr. Kubala, Defense just asked you if  
11 you're licensed as a forensic psychologist. However, has any  
12 of your previous training or work involved forensic components?

13 THE WITNESS: Yes.

14 BY MS. KEESLER:

15 Q Can you just give a summary of which work experience your  
16 training involves forensic components?

17 A All of them.

18 Q Okay, so that would – everything you testified to?

19 A JJPI (phonetic), my time at Delstar. The very basis of a  
20 forensic evaluation or anything like that is something that's  
21 court-involved. So I very frequently work with court-involved  
22 individuals.

23 Q Okay. Now, Dr. Kubala – give me one moment. Okay, Dr.  
24 Kubala, you discussed in your course of your career that you've  
25 conducted it sounds like many evaluations over the course of

1 your career. As part of your practice, you indicated that  
2 you've been hired for legal cases. Now, when you're hired for  
3 legal cases, do you conduct what we call psychological  
4 evaluations?

5 A Yes.

6 Q Okay. Do you have to be a licensed forensic psychologist  
7 to conduct these psychological evaluations?

8 A No.

9 Q Okay. And why is that?

10 A Because the basis of it is clinical psychology. So you're  
11 looking at diagnostics. And throughout my training I've been  
12 trained on how to identify different symptomology, how to use  
13 the clinical book that we use to diagnose patients, and to  
14 determine what treatment would be appropriate.

15 Q Okay. And can you please describe the general procedures  
16 in conducting a psychological evaluation of an individual?

17 A So you start off with a referral question. There's a  
18 reason the person's coming to see you. You go over different  
19 things like confidentiality, identify how confidentiality  
20 impacts the evaluation you're doing, and then you start with a  
21 structured interview.

22 So you touch on a variety of topics within the person's  
23 life that may be impacting their current mental health or their  
24 behavior or anything like that. And then you determine which  
25 psychological measures would be the most appropriate to

1 identify a diagnostic summary of how this person is feeling.

2 Then you complete those measures, you score them, you  
3 interpret them. You develop a diagnosis. And then you create  
4 a report that summarizes everything, with your conclusions and  
5 recommendations for treatment.

6 Q Okay. As part of that psychological evaluation, are you  
7 also reviewing any documents?

8 A Yes.

9 Q Okay, what types of documents?

10 A Anything that's provided is generally helpful: past  
11 medical information documentation; past psychological  
12 experiences, whether that's therapy notes or psychiatric  
13 diagnostic notes; and any health information that's helpful.

14 Q When you're hired for a legal case study are you also  
15 provided with, I guess, legal documents?

16 A Yes.

17 Q Okay. And how does that I guess shape or inform your  
18 psychological evaluation, if at all?

19 A It just lets me know what the person is experiencing from  
20 a legal point of view.

21 Q Okay. You talked about the structured interview. What is  
22 the purpose of this structured interview?

23 A The structured interview is just an organized way to make  
24 sure that you are addressing the pertinent topics for that  
25 person. So as I discussed before, the bio-psycho-social.

1 There's a lot of things that fall under those three categories.

2 So you're asking about history of trauma, health issues,  
3 relationships, a variety of different experiences. Whether  
4 they've attended therapy in the past, have they ever received a  
5 psychiatric diagnosis. There's a quite a few areas that are  
6 touched upon.

7 Q Okay. During this structured interview, do you also  
8 assess differences in personality?

9 A Could you re-ask that question?

10 Q Sure. Maybe I'm just phrasing it incorrectly. Do you  
11 make any, I guess, personality determinations during the client  
12 interview?

13 A With most personality disorders there are hallmark  
14 features that you're trained to look for as a licensed  
15 psychologist.

16 So if somebody does present in a way that might suggest  
17 they're struggling with a personality disorder diagnosis or  
18 they're experiencing the world in a concerning way, then you  
19 would address that and provide some personality measures and  
20 inventories that would help you come to a decision regarding if  
21 this is an appropriate diagnosis or not.

22 Q Can you describe to the court and explain to the jury what  
23 a personality disorder is.

24 A A personality disorder is typically it's the way that the  
25 person experiences the world. So you've probably heard of



1 narcissistic personality disorder, there's borderline  
2 personality disorder, there's antisocial personality disorder.

3 Antisocial personality disorder is often talked about in  
4 forensic cases because there's a lack of empathy that's usually  
5 evident. There's a desire to go against social norms. Those  
6 are the sorts of things that you would question and kind of  
7 things that you would question and kind of follow up on with a  
8 measure.

9 Q Okay. Now, you earlier mentioned that as part of the  
10 psychological evaluation, you will determine if - I guess which  
11 measures are appropriate. Is measures kind of a fancy word for  
12 tests?

13 A Yes.

14 Q Okay. And tell the jury how it is that you determine  
15 which measures to administer during the psychological  
16 evaluation.

17 A So as I alluded to just previously, if you're seeing  
18 different suggestions that a personality disorder might be  
19 evident or if somebody gives you a response to a question that  
20 suggests depression, anxiety, those are the kind of things that  
21 you're over in your head in preparing your test battery. And a  
22 test battery is just a group of tests that you're going to  
23 administer.

24 Q Okay. If an individual is presenting to you symptoms of  
25 anxiety or depression, how would that impact your determination

1 as to which measures to administer?

2 A The Beck Depression Inventory and the Beck Anxiety  
3 Inventory are the tried-and-true sort of self-report measures  
4 that assess those different areas, depression and anxiety.

5 Q Okay. Now, Dr. Kubala, are you trained to detect whether  
6 someone might be malingering?

7 A Yes.

8 Q Okay, can you describe to the jury first what malingering  
9 means within the clinical context.

10 A Malingering means essentially that you're trying to  
11 present worse than you actually are. So if you feeling a  
12 certain way, malingering would be you are trying to convince  
13 the person who's evaluating you that your symptoms are actually  
14 much worse than they are.

15 Q Okay. And as a trained professional, I guess what signs  
16 or indicators would inform you that a particular individual  
17 might be malingering?

18 A A good example is if the person uses language that is  
19 straight from the diagnostic manual that we use that most  
20 people would not be familiar with. If they use that exact  
21 terminology, that can be a little bit of a red flag.

22 If they persevere on a certain topic even though you're  
23 trying to get to a different realm of questioning, that could  
24 be another suggestion of malingering.

25 Q Could you just define what perseverating means.

1 A Yes, perseverating means just returning to the same  
2 question or topic or word over and over and over again despite  
3 redirection.

4 Q Okay. If during the interview you had concerns or you  
5 just detected signs of malingering, I guess would you  
6 administer any additional tests?

7 A Yes.

8 Q What types of tests?

9 A There are tests that are specifically made to detect  
10 malingering. Within certain objective tests they are  
11 internally within there. Otherwise, you can just administer a  
12 malingering measure.

13 Q Okay. You mentioned that as part of your psychological  
14 evaluation that you will determine whether I guess there's a  
15 diagnosis to be made.

16 A Correct.

17 Q It's not - is it fair to say it's not always your goal to  
18 find a diagnosis?

19 A Correct.

20 Q Okay. And how do you determine how to diagnose the  
21 individual?

22 A We have the DSM-5, which is the Diagnostic and Statistical  
23 Manual of Mental Disorders. The 5 is just because it's in the  
24 fifth edition, that came out nearly ten years ago, about 2013.  
25 And they do a great job. That is the - the diagnostic tool

1 that psychologists and mental health professionals use. And  
2 they provide almost a checklist of different symptoms.

3 So they have - there are a couple hallmarks of each  
4 diagnosis and then are maybe a list of different symptoms and  
5 the person has to possess at least a certain number of those  
6 symptoms to receive that diagnosis.

7 Q And after you complete the psychological evaluation, do  
8 you, I guess, memorialize your findings in a report?

9 A Yes.

10 Q Okay. And do you, I guess, arrive at an opinion if it's  
11 with respect to a legal case that you were hired for?

12 A Yes.

13 Q Okay. Dr. KUBALA, back on January 4, 2021, did you  
14 evaluate the Plaintiff in this case, Marnie O'Brien?

15 A I did.

16 Q Was this in person or via video?

17 A It was via video.

18 Q Can you explain to the jury why it was conducted via  
19 video?

20 A The pandemic had hit.

21 Q And we're referring to the COVID-19 pandemic?

22 A Correct.

23 Q Okay. The fact that you conducted this evaluation by  
24 video, did that at all impair your ability to evaluate her?

25 A No.

1 Q Okay, and why is that?

2 A The American Psychological Association has put out ample  
3 guidance on how to administer appropriately, how conduct  
4 therapy over video, and even phone at times. How to complete  
5 and administer psychological measures. And it's an acceptable  
6 way to do so right now.

7 Q Dr. Kubala, can you explain to the jury what is the  
8 purpose -- with respect to you evaluation of Ms. O'Brien, what  
9 was the purpose of her evaluation?

10 A To determine if the experience of sexual harassment she  
11 went through was causing lingering psychological damage.

12 Q Did you review any records prior to evaluation?

13 A I did.

14 Q Okay. One moment. Did you review her charge with the  
15 Employment Opportunity - I'm sorry, the Equal Employment  
16 Opportunity Commission, otherwise known EEOC?

17 A Yes.

18 Q And did you also review her complaint that she filed in  
19 court?

20 A Yes.

21 Q Did you also review her - the Defendant's answer to her  
22 complaint?

23 A Yes.

24 Q Did you review any medical records prior to her  
25 evaluation?

1 A I wasn't provided with any, no.

2 Q Okay. Were you made aware that she had previously been  
3 diagnosed with ADHD?

4 A Yes.

5 Q Can you just describe to the jury what ADHD is?

6 A Attention Deficit Hyperactivity Disorder. It tends to  
7 impact inattention, concentration difficulties, and  
8 hyperactivity.

9 Q Okay. And you mentioned that you had not received any  
10 medical records. I imagine you didn't receive any records with  
11 respect to her ADHD diagnosis, is that correct?

12 A Correct.

13 Q Did that at all impact your ultimate opinion in this case?

14 A No.

15 Q Okay. And did you speak with Ms. O'Brien prior to  
16 evaluating her?

17 A No.

18 Q Okay. Now, at the beginning of her evaluation, did you go  
19 through the procedures that you just testified about in regards  
20 to conducting a psychological evaluation?

21 A Yes.

22 Q Okay. As before she began her evaluation, did you give  
23 her the instructions as to how the evaluation would proceed?

24 A Yes.

25 Q And did she display that she understood the instructions?

1 A Yes.

2 Q Okay. During her evaluation, did you tape (phonetic) the  
3 structured that you previously testified about?

4 A Yes.

5 Q And did you document this interview - or actually, strike  
6 that. About how long was your evaluation of Ms. O'Brien back  
7 on January 4, 2021?

8 A Approximately 90 minutes.

9 Q And the client interview that you took of Ms. O'Brien, do  
10 you document that into a type of report?

11 A Yes.

12 Q Okay. And did you prepare a report with respect to Ms.  
13 O'Brien's evaluation?

14 A Yes.

15 Q Okay. Would it help you refresh your recollections to see  
16 that report?

17 A Yes.

18 MS. KEESLER: May I approach the witness?

19 THE COURT: Certainly.

20 THE WITNESS: Thank you.

21 MS. KEESLER: Dr. Kubala, is that the report that you  
22 prepared as it relates to this case?

23 THE WITNESS: Yes.

24 BY MS. KEESLER:

25 Q Okay. During Ms. O'Brien's evaluation, or rather let me

1 just take it back for a second. During the client interview,  
2 did you have any concerns of a personality disorder with  
3 respect to Ms. O'Brien?

4 A No.

5 Q Did you have any concerns of, I guess, malingering or  
6 exaggeration, report of exaggerated symptoms?

7 A No.

8 Q How did you determine which measures to administer during  
9 her evaluation?

10 A After the structured interview, it became apparent that  
11 she was struggling with anxiety and possibly depression.

12 Q And what symptoms did she report to you?

13 A She reported difficulty concentrating, excessive worry,  
14 difficulty controlling the worry, restlessness, sleep  
15 difficulty, irritability. And she was - it was physically  
16 evident because she was shifting in her seat, wringing her  
17 hands quite a bit.

18 Q Did she report any nightmares to you as well?

19 A Yes.

20 Q Okay. And based on the information that she provided,  
21 which measures did you end up ultimately administering?

22 A The Beck Anxiety Inventory and the Beck Depression  
23 Inventory.

24 Q Okay. Let's start with the Beck Depression Inventory.

25 Can you please describe to the jury what the Beck Depression



1 Inventory measures?

2 A The Beck Depression Inventory measures depressive symptoms  
3 and it focuses on a short term prior to when you're meeting  
4 with the person. So they're talking about what they're  
5 experiencing presently.

6 Q Okay. And the Beck Depression Inventory, is it a written  
7 test, is it a verbal test? Could you just describe to the jury  
8 what that measure is - what it entails?

9 A That authors of the test say that it can really be done  
10 either way. There are certain situations that you have to  
11 think about when you're administering psychological testing.  
12 So that impacts literacy issues, mental fatigue on the part of  
13 the client, all of those things need to be taken into  
14 consideration.

15 So if I was in person with Ms. O'Brien, she could have  
16 done it herself. But because we were over the Zoom platform, I  
17 completed those questions. And those questions each have three  
18 to four answers. So if one question is how - you're talking  
19 about sadness or sleep disturbance, it gives you three options  
20 that really capture accurately what you're experiencing, rather  
21 than a true-false kind of a situation.

22 Q Okay, I'm just looking at your report of the Beck  
23 Depression Inventory. You mention that it lists four  
24 statements arranged in increasing severity about a symptom of  
25 depression, is that correct?

1 A Correct.

2 Q Okay, can you just give an - well, actually, are you  
3 permitted to, I guess, give a description of the types of  
4 answers involved with this measure?

5 A I can give a vague description, I cannot - not with the  
6 test item specifically.

7 Q Why is that, by the way?

8 A They're copyrighted and because of validity concerns, you  
9 wouldn't want to make that public information.

10 Q Okay, so could you vaguely describe what, I guess, the  
11 four statements would be that, I guess, the individual could  
12 choose, is that correct?

13 A Correct. So for example if the first question is I sleep  
14 and the answers would be as well as ever or less than usual,  
15 more than usual, or I can't sleep at all. That's an example of  
16 the four responses that you could choose.

17 Q Okay, so they are phrased responses to describe the  
18 severity, correct?

19 A Correct.

20 Q Okay. And this Beck Depression Inventory, is - how do you  
21 score this measure? Is there a scale, could you describe that  
22 to the jury?

23 A Yeah, so if there are - there are some that have three  
24 items and there are some that have four. And it's graded on a  
25 way of zero, one, two, or three. And then you add those up

1 from the front of the page, and then there's more questions on  
2 the back of the page.

3 It's only about 21 questions. And then you add that  
4 total. And then there are ranges for which the score will  
5 fall.

6 Q Okay. So can you just describe what the scale is and the  
7 ranges are for this particular measure.

8 A Yes, if you don't mind if I double check.

9 Q Of course.

10 A I want to be accurate.

11 Q And I can direct you specifically to page 5 of your  
12 report.

13 A Okay. So for the depression inventory, total scale -  
14 total score of zero to 13 is considered minimal. So if they  
15 score anywhere between zero to 13, it would be considered  
16 minimal depressive symptoms. Fourteen to 19 is mild, 20 to 28  
17 is moderate, and 29 to 63 would be considered severe.

18 Q Okay. Now, in this instance with respect to Ms. O'Brien,  
19 where did she score on the Beck Depression Inventory?

20 A She fell in the mild level.

21 Q Okay, so this would be a mild level for her depressive  
22 symptoms, is that correct?

23 A Correct.

24 Q All right. And now can we move on to the Beck - I don't  
25 want to botch this, Beck Anxiety Inventory.

1 A Yes.

2 Q Can you describe to the jury what this measure entails and  
3 what it tests.

4 A It's a similar layout, but this focuses on anxiety  
5 symptoms. So it'll give an example, for example, feeling hot,  
6 and then there's an option to say never, sometimes, frequently,  
7 or always.

8 Q Okay. And is there a scale, I guess, associated with this  
9 measure as well?

10 A Yes.

11 Q Okay, and can you describe that scale to the jury.

12 A Yes. So again, zero to 7 would be considered minimal in  
13 terms of anxiety symptoms, 8 to 15 would be considered mild, 16  
14 to 25 is considered moderate, and 29 to 63 is severe.

15 Q Okay. I see this as 26 to 63. Is it 26 to 63 or 29 to  
16 63?

17 A Twenty-six to 63, I apologize.

18 Q Okay, and where did Ms. O'Brien score on the Beck Anxiety  
19 Inventory?

20 A She received a 29, which is in the severe level.

21 Q Okay. The Beck inventories, the Beck Anxiety Inventory  
22 and the Beck Depression - Beck Depression Inventory, are these  
23 methods reliable measures?

24 A Yes.

25 Q And are these methods generally accepted in the

1 psychological fields?

2 A Yes.

3 Q Okay, and when you say that, what does that mean?

4 A It means that they are - they're - they've been researched  
5 continuously, dozens, probably hundreds of times in respect to  
6 the validity and reliability that they convey and they've been  
7 found to be robust or meaningful in each of those sections.

8 Q Okay, and are these evidence-based measures?

9 A Yes.

10 Q What does that mean? Can you describe that to the jury?

11 A Evidence-based is the result of the - all this research.  
12 So all of this research has concluded that they are evidence-  
13 based tests and they test what they say they test. And they  
14 test them consistently.

15 Q Okay. Now, after administering the measures and taking  
16 the interview of Ms. O'Brien, were you able to diagnose Ms.  
17 O'Brien?

18 A Yes.

19 Q Okay, and what did you diagnose Ms. O'Brien with?

20 A Generalized Anxiety Disorder.

21 Q Okay, can you describe to the jury what Generalized  
22 Anxiety Disorder is and what the essential features of - I'm  
23 going to refer to it as GAD, G-A-D, the essential features of  
24 GAD.

25 A Generalized Anxiety Disorder falls under the anxiety

1 disorders section of the DSM that I described before. The  
2 hallmark symptom is excessive, uncontrollable worry that the  
3 person recognizes they're unable to control. So that kind of  
4 adds to the cycle of ongoing anxiety.

5 It creeps into different areas including sleep. It might  
6 impact different things like appetite, relationships, self-  
7 esteem, concentration. It can be fairly insidious in terms of  
8 how it presents.

9 Q Okay, and I guess you mentioned earlier that the DSM-5  
10 presents almost like a checklist --

11 A Yes.

12 Q For certain diagnoses. Do you have to check off each and  
13 every single, I guess, symptom or presenting symptom to qualify  
14 for that particular diagnosis?

15 A No.

16 Q So with respect to Generalized Anxiety Disorder, I guess  
17 how many of the symptoms need to be present for you to be able  
18 to diagnose an individual with GAD?

19 A There are a couple hallmark symptoms that must be present,  
20 namely the excessive worry that is uncontrollable, that's a  
21 must. And then there are symptoms - let's say that there are  
22 six symptoms and she - you have to be able to identify three  
23 that the person is experiencing. Marnie, or Ms. O'Brien  
24 experienced more than the minimum.

25 Q My apologies. Okay --

1 A Then there are two other options that need to be  
2 completed, meaning that it has to impact general functioning,  
3 and it's not better accounted for by a medical diagnosis.

4 Q Okay, and how can Generalized Anxiety Disorder impact an  
5 individual's daily life?

6 A It can be paralyzing in many ways. There can be quite a  
7 bit of excessive worry that there's no relief from. And that  
8 can translate into muscle tension, GI symptomology, sweating,  
9 trembling, shaking that can make it physically impossible to  
10 complete even the most basic of tasks.

11 And then psychologically it can really challenge your  
12 self-esteem, your belief in your self-efficacy or your ability  
13 to complete tasks. It can be very daunting.

14 Q Is it fair to say that you don't necessarily have to be  
15 paralyzed within your daily life to be diagnosed with  
16 Generalized Anxiety Disorder. Is that fair to say?

17 A Correct.

18 Q Okay, so there's almost like a scale.

19 A Sure.

20 Q Mild to severe, is that fair to say?

21 A Fair.

22 Q Okay. And give me one moment. Are panic attacks, I  
23 guess, a hallmark of Generalized Anxiety Disorder?

24 A They can be.

25 Q Okay. Do you have to exhibit panic attacks to be

1 diagnosed with Generalized Anxiety Disorder?

2 A No.

3 Q Okay, your diagnosis of Ms. O'Brien with generalized  
4 anxiety disorder, what was that diagnosis based on?

5 A The DSM-5 as well as the measures in my interview of Ms.  
6 O'Brien.

7 Q Okay, and was this based on the symptoms that she  
8 presented with?

9 A Correct.

10 Q Okay. And is this based on the symptoms that you had  
11 earlier testified about in terms of what she presented?

12 A Correct.

13 Q Okay. Now, did you also reach an opinion as to Ms.  
14 O'Brien's emotional distress?

15 A Yes.

16 Q Okay, and what was that opinion?

17 A That her current symptoms are directly attributed to the  
18 sexual harassment she suffered.

19 Q Okay. And you're referring to the sexual harassment that  
20 she suffered. So during her client interview, did she convey  
21 to you a history of sexual harassment?

22 A Yes.

23 Q Okay. And was this with respect to her employment at  
24 Middle East Forum?

25 A Yes.



1 Q Okay. Is it fair to say that she provided you quite a  
2 lengthy summary as to what occurred during her appointment with  
3 MEF, or Middle East Forum, correct?

4 A Yes, yes.

5 Q And this opinion with respect to her emotional distress,  
6 what is that based on?

7 A I'm sorry, can you re-ask the question?

8 Q Sure, the opinion with - that you just gave with respect  
9 to her emotional distress, what is that opinion based on?

10 A The lingering symptomology that she shared about. I mean  
11 down to she received a call from a blocked number in order to  
12 set up our session and she described having severe anxiety  
13 related to just having an unknown number call her for fear that  
14 it was linked to the harassment she suffered. Down to her  
15 inability to sleep, very terrifying nightmares. And it was -  
16 it all came back to the sexual harassment that she suffered.

17 Q Okay. And did you - was this opinion also based on her  
18 responses to the measures, the Beck Anxiety Inventory and the  
19 Beck Depression Inventory?

20 A Yes.

21 Q Okay. And is this also, is your opinion also based on the  
22 identification of symptoms?

23 A Yes.

24 Q That she presented with. Did you consider any other  
25 diagnostic possibilities when forming your opinion?

1 A Yes.

2 Q And what other diagnostic possibilities did you consider?

3 A I considered a possible mood disorder, possibly a  
4 depressive disorder.

5 Q Okay, and why is that you did not diagnose her with a  
6 depressive disorder?

7 A She didn't meet the criteria --

8 Q Okay.

9 A For the presenting symptoms.

10 Q But she did meet the criteria for the anxiety disorder  
11 Generalized Anxiety Disorder, correct?

12 A Correct.

13 Q Dr. Kubala, since your evaluation of Ms. O'Brien and  
14 drafting the report, have you had a chance to review Ms.  
15 O'Brien's deposition transcript in this proceeding?

16 A Yes.

17 Q After reviewing that transcript, does that change or  
18 impact your opinion that you just testified to?

19 MR. CAVALIER: Objection.

20 THE COURT: Grounds?

21 MR. CAVALIER: We're outside the report. This is  
22 after she issued the report.

23 THE COURT: I'm sorry, I couldn't hear you.

24 MR. CAVALIER: I'm sorry. We're outside her report.

25 She - she was deposed after this expert issued her report, it's

1 not in her report. She can't base her opinions on subsequent  
2 information that she may or may not have come in possession of.

3 THE COURT: Can we approach just for a moment?

4 MR. CAVALIER: It's beyond the scope of report.

5 THE COURT: Don't we frequently (inaudible) witness  
6 (inaudible) and then opine and that would necessarily have a  
7 (inaudible) report, and that her (inaudible).

8 MR. CAVALIER: That's her line of testimony, not her  
9 deposition testimony.

10 THE COURT: Gentleman, help me with the distinction.

11 MR. CAVALIER: As long as I have some leeway with it,  
12 Your Honor,

13 THE COURT: Fair enough. You understand that, Ms.  
14 Keesler?

15 MS. KEESLER: Yes.

16 THE COURT: Okay, thank you.

17 MS. KEESLER: Thank you.

18 THE COURT: Attorney Keesler, if you would restate  
19 the question, please.

20 MS. KEESLER: Sure. Dr. Kubala, after - since your  
21 evaluation of Ms. O'Brien and drafting the report, have you had  
22 a chance to review Ms. O'Brien's deposition testimony in this  
23 proceeding?

24 THE WITNESS: Yes.

25 BY MS. KEESLER:

1 Q And after reviewing that transcript, does that change or  
2 impact the opinions that you just testified to?

3 A No.

4 Q Did you review portions of her transcript as it related to  
5 her relationship with her paramour, Matthew Ebert?

6 A Yes.

7 Q All right. And why is that after reviewing that, that  
8 does not impact your decision? Or your opinion, rather?

9 A When I asked her about her current relationship with her  
10 partner, she reported a generally healthy experience.

11 Q Okay. And her deposition transcript I believe referenced  
12 that part of her relationship with Mr. Ebert was stressful.  
13 After reading that, why did that not impact your decision, or  
14 opinion, rather, in this - in your report?

15 A Because the majority of relationships have moments that  
16 are stressful and events.

17 Q Okay. So is your distinction between, I guess, daily  
18 stress and other types of stress?

19 A Yes.

20 Q Okay. Did you review portions of her transcript with  
21 respect to Mr. Ebert in terms of how - I guess it was specific  
22 incidents where she reports a sabotage upon - I'm sorry, by Mr.  
23 Ebert.

24 A Yes.

25 Q Okay. Why is it that that portion did not impact your

1 opinion in this case?

2 A Because like I said, it was a situation that she  
3 experienced and overcame. She dealt with it in a healthy way.

4 Q Okay. And so did you also review portions of her  
5 transcript about her son's existing mental health issues?

6 A Yes.

7 Q Okay, and did that impact or change your opinion?

8 A No.

9 Q And why is that?

10 A When she spoke about her adult children, she spoke about  
11 them with pride.

12 Q Okay. And I guess having a child with mental health  
13 issues, I guess did that present as concerning to you as some  
14 type of alternative source of stress?

15 A No.

16 Q Okay, and why is that?

17 A Because as I said, she described her relationship and her  
18 children overall as resilient and healthy and had good  
19 relationships.

20 Q Okay. So during your interview of Ms. O'Brien, what  
21 presented as like the source of stress in her life?

22 A Her experience of sexual harassment and subsequent  
23 symptomology related to that.

24 Q Okay. Dr. Kubala, did you have an opportunity - give me  
25 one moment - to review the reports prepared by the Defendant's

1 expert, Dr. Lee Goldstein (phonetic)?

2 A Yes.

3 MS. KEESLER: Okay. Did you read his, quote unquote,  
4 rebuttal report of your examination?

5 MR. CAVALIER: I'm sorry, Your Honor, I object.

6 THE COURT: Grounds?

7 MR. CAVALIER: There's no rebuttal report issued by  
8 this witness.

9 PARTICIPANT: Can you speak a little more loudly,  
10 please?

11 MS. KEELSER: I'm sorry, can we approach? I think  
12 there's some confusion.

13 THE COURT: Please.

14 MR. CAVALIER: There's no rebuttal report.

15 MS. KEESLER: Dr. Goldstein specifically provided us  
16 -

17 (Simultaneous speaking.)

18 MR. CAVALIER: Dr. Goldstein rebuttal Kubala, Kubala  
19 never rebutted Goldstein.

20 MS. KEESLER: Right, I asked her did you have an  
21 opportunity to review his report, his rebuttal report to your  
22 examination.

23 MR. CAVALIER: I don't - without a report, without  
24 any analysis, I don't think that's proper testimony.

25 MS. KEESLER: I'm confused what he's saying. Dr.

1 Goldstein prepared a rebuttal report to Dr. Kubala's -

2 (Simultaneous speaking.)

3 THE COURT: Correct.

4 MS. KEESLER: I'm asking her did she have chance to  
5 review Dr. Goldstein's rebuttal report because I want to ask  
6 questions about whether she agrees with his rebuttal.

7 THE COURT: And Attorney Cavalier is saying she  
8 didn't issue a rebuttal of her own to the Defendant's expert.

9 MS. KEESLER: Well, that's not necessary. She can  
10 still review it and give her opinion as to whether she agreed  
11 with his conclusions of her examination.

12 MR. CAVALIER: So long as that's the limit, and  
13 again, and as long as I have leeway with it -

14 MS. KEESLER: What do you mean by the limit?

15 MR. CAVALIER: I'm not going to step on it.

16 MS. KEESLER: Because I guess the question is she's  
17 going to testify. This is what (inaudible). She's going to  
18 testify she's doesn't agree with the report and why. He's  
19 obviously going to cross on issues raised in Dr. Goldstein's  
20 report, so I'm just giving him an opportunity to explain it on  
21 direct.

22 THE COURT: Well, won't you be able to do that on  
23 redirect?

24 MS. KEESLER: I could.

25 THE COURT: I think that might be the better order.

1 Okay?

2 MS. KEESLER: Okay.

3 THE COURT: Next question, please.

4 MS. KEESLER: Sure.

5 THE COURT: Attorney Kee.

6 MS. KEESLER: Give me one moment.

7 Dr. Kubala, as a result of the psychological  
8 evaluation of Ms. O'Brien, did you have any treatment  
9 recommendations for Ms. O'Brien?

10 THE WITNESS: Yes.

11 BY MS. KEESLER:

12 Q And what were your treatment recommendations?

13 A Specifically that she meet with and be followed by and  
14 monitored by a psychiatric practitioner. As well as beginning  
15 therapy, individual therapy, and implementing group therapy if  
16 the individual therapist deemed that appropriate.

17 Q Okay, and why did you, I guess, provide these treatment  
18 recommendations in light of her evaluation?

19 A Based on the symptomology that she shared, she's  
20 struggling. And these are things that there are tools that can  
21 be implemented to alleviate the symptoms that she's struggling  
22 with.

23 Q All right. Dr. Kubala, the opinions you testify to today,  
24 do you hold these opinions you testify to to a reasonable of  
25 psychological certainty?



1 A I do.

2 MS. KEESLER: Thank you, Dr. Kubala, I'm going -  
3 Defense may have some questions for you.

4 THE WITNESS: Thank you.

5 THE COURT: Attorney Cavalier.

6 MR. CAVALIER: Thank you.

7 THE COURT: Thank you.

8 MR. CAVALIER: Good morning.

9 THE WITNESS: Good morning.

10 CROSS-EXAMINATION

11 BY MR. CAVALIER:

12 Q You were hired by the Plaintiff's lawyers in this case,  
13 correct?

14 A Correct.

15 Q And I think I heard you testify on direct, but please  
16 correct me if I'm wrong, that you've spent the majority of your  
17 career counseling survivors of trauma, is that a fair  
18 statement?

19 A That's a fair statement.

20 Q Are those patients of yours mostly women?

21 A Mostly.

22 Q You never treated a patient as a therapist, though,  
23 correct?

24 A Correct.

25 Q You did recommend that she seek treatment, as you just

1 testified to, though, correct?

2 A Correct.

3 Q You thought it was important that she seek that treatment?

4 A Correct.

5 Q Do you know if she ever did?

6 A I don't know.

7 Q You advertise your services via a website and social media  
8 mostly, correct?

9 A Correct.

10 Q Do you have an Instagram page?

11 A I do.

12 Q And that Instagram page, and again, correct me if I'm  
13 wrong, is it fair to say that that page is tailored towards  
14 supporting women who have suffered a trauma in their lives?

15 A Suffering trauma survivors.

16 Q Okay, okay. And the same for your webpage, right?

17 A Correct.

18 Q You're generally speaking, an advocate for women who have  
19 suffered a trauma in their lives, fair?

20 A Generally speaking an advocate for survivors overall.

21 Q Right. You do understand, though, today you're here as an  
22 expert witness, not an advocate, correct?

23 A Correct.

24 Q Okay. How many times have you testified as an expert  
25 witness?

1 A This is my first jury experience, but I've completed  
2 depositions I think four times maybe.

3 Q Okay. And you said, I think I heard on direct, that about  
4 20 percent of your practice deals with legal cases, correct?

5 A Correct.

6 Q Okay. Every time you've served as an expert, your  
7 client's been a plaintiff.

8 A Correct.

9 Q You're never testified on behalf of the defendant in any  
10 case, correct?

11 A Correct.

12 Q You've never testified on behalf of a defendant in sexual  
13 harassment case, correct?

14 A Correct.

15 Q And in any case where you've been hired as an expert, you  
16 have never found that a plaintiff alleging sexual harassment  
17 was not suffering trauma as a result of that sexual harassment,  
18 correct?

19 A That's correct.

20 Q The documents you reviewed in this case, they're listed in  
21 your report, correct?

22 A Correct.

23 Q And you still have your report in front of you?

24 A I do.

25 Q Okay. You listed the Plaintiff's charge, that's the EEOC

1 charge, the notice of the right to sue the Plaintiff was  
2 issued, the complaint, and the Defendant's answer, correct?

3 A Correct.

4 Q You did not review the Defendant's counterclaim against  
5 the Plaintiff, right?

6 A Correct.

7 Q You did not review any transcripts of any phone calls made  
8 by Matthew Ebert.

9 A Correct.

10 Q You didn't review any of Plaintiff's prior medical  
11 records.

12 A Correct.

13 Q You didn't review anything other than the legal  
14 documentation that was provided to you by the Plaintiff's  
15 attorneys, correct?

16 A Correct.

17 Q You met with Ms. O'Brien one time?

18 A Yes.

19 Q Have you ever been in the same room with her before today?

20 A No.

21 Q You said your evaluation took about 90 minutes?

22 A Correct.

23 Q You did a structured interview?

24 A Yes.

25 Q And you administered two tests, correct?

1 A Correct.

2 Q Would you have preferred to do the examination in person?

3 A No.

4 Q You don't think it matters at all, to be able to --

5 A I didn't --

6 Q To be able to observe your subject in the same room?

7 A In the same room? No.

8 Q The very first line of your report: Marnie O'Brien is a

9 51-year-old female was the victim of chronic sexual harassment

10 by her previous manager, Greg Roman, while employed by the

11 Middle East Forum. What's the basis for that statement?

12 A What I was provided and reviewed as well as self-report.

13 Q Okay. So the legal documentation from the Plaintiff and

14 Plaintiff's own words.

15 A Yes.

16 Q Nothing beyond that.

17 A Correct.

18 Q Okay. So other than that, you have no objective evidence

19 to base that conclusion on, correct?

20 A Correct.

21 Q And it's fair to say, is it not, that when the Plaintiff

22 came to you and told you her story, you took her at her word.

23 A Correct.

24 Q Okay. You didn't conduct any independent evaluation to

25 determine whether that backstory was true.

1 A Correct.

2 Q And other than Plaintiff's own story and the legal  
3 documentation that you got from Plaintiff's Counsel, again, we  
4 know there's no other basis for your opinion that Plaintiff did  
5 in fact suffer sexual harassment at the hands of Mr. Roman.

6 A Correct.

7 Q Don't you think as an expert witness in federal court  
8 before you make a statement like that, you have an obligation  
9 to go a little deeper than just taking Plaintiff at her word?

10 MS. KEESLER: Objection.

11 THE COURT: Overruled.

12 THE WITNESS: No.

13 MR. CAVALIER: No. Just, you can accuse someone of  
14 sexual harassment in a federal court document based on nothing  
15 more than legal documentation from Plaintiff's counsel and her  
16 own - her own story.

17 THE WITNESS: After meeting with -

18 MS. KEESLER: Objection. She's here to testify with  
19 respect to the (inaudible), she's not here to make a factual  
20 determination. That's a decision for the jury.

21 MR. CAVALIER: I agree with you. But the first line  
22 of her report accuses Mr. Roman of being the cause of that - of  
23 that emotional distress, and I'm entitled to explore that.

24 THE COURT: And I would agree with that.

25 MR. CAVALIER: You say the purpose of this evaluation

1 is to determine within a reasonable degree of psychological  
2 certainty how the aftermath of being the victim of sexual  
3 harassment and gender discrimination will continue to impact  
4 Ms. O'Brien and what can be implemented to reduce negative  
5 impact.

6 Did I read that accurately from your report?

7 THE WITNESS: Yes.

8 BY MR. CAVALIER:

9 Q So again, you based that statement purely on the  
10 information from the Plaintiff's lawyers and Plaintiff's own  
11 story.

12 A Correct.

13 Q No independent evaluation.

14 A Correct.

15 Q And sitting here today because of that, you can offer no  
16 opinion that's helpful to this jury as to whether Ms. O'Brien  
17 was actually sexually harassed, correct?

18 A Can you rephrase that?

19 Q Sure. Because you're taking the Plaintiff and her counsel  
20 at her word as to the information you've relied on in  
21 diagnosing the Plaintiff, you can't offer an opinion helpful to  
22 the jury about the cause of the emotional trauma, correct?

23 A Incorrect.

24 Q Why?

25 A Based on my interview of Ms. O'Brien as well as the

1 testing completed, I can certainly have an opinion about what  
2 she shared with me and the following symptomology.

3 Q Even is she didn't tell you about Matthew Ebert in that  
4 interview?

5 A Yes.

6 Q That doesn't concern you as to whether she's being fully  
7 truthful and fully disclosing all of the relevant issues in her  
8 backstory?

9 A No.

10 Q Okay. Did you do any tests to evaluate whether she's  
11 telling the truth?

12 A Are you talking a malingerer inventory?

13 Q Yes.

14 A I did not.

15 Q Did you consider any other alternative causes beyond -  
16 besides sexual harassment as the cause of Plaintiff's emotional  
17 distress?

18 A We discussed a variety of topics that every human  
19 experiences relationship-wise, history of physical trauma,  
20 anything like that, and nothing presented itself.

21 Q But you didn't review her medical records.

22 A I didn't have any medical records, correct.

23 Q She didn't tell you about Matthew Ebert.

24 A That - I know that that was her partner's name, that was  
25 it.



1 Q Right, okay. You say specifically she has a heightened  
2 startle response as in is generally hypervigilant, paranoid of  
3 being monitored or her privacy being threatened by Mr. Roman.  
4 Has a significant distrust of men, excessive worry that is  
5 uncontrollable, muscle tension, and difficulty concentrating  
6 and focusing.

7 A Sorry, what page are you on, sir, three? Four, got it.  
8 Correct.

9 Q And as - as you testified to on direct, a recent example  
10 includes when this evaluator contacted Ms. O'Brien from a  
11 private phone number, Ms. O'Brien experienced increased anxiety  
12 at the thought a call might be coming from Mr. Roman.

13 A Correct.

14 Q As you testified to on direct.

15 A Correct.

16 Q Your basis for that is, again, entirely what the Plaintiff  
17 herself told you, correct?

18 A Correct.

19 Q The tests administered, as we confirmed, were all done  
20 over Zoom, right?

21 A Correct.

22 Q The Beck Anxiety Disorder Test is 21 questions.

23 A Correct.

24 Q And as you testified to on direct, it's a self-report  
25 tool, correct?

1 A Correct.

2 Q Plaintiff supplies her own answers to the questions.

3 A Correct.

4 Q The test only covers the last week.

5 A Correct.

6 Q Right, so if the Plaintiff was emotionally distressed six  
7 months earlier, this test would have ne relevance to  
8 discovering that, correct?

9 A Correct.

10 Q Wouldn't the Plaintiff in a lawsuit seeking emotional  
11 distress damages have an incentive to exaggerate her answers on  
12 such a test?

13 A No.

14 Q Why not?

15 A Because there are ways to determine if she's malingering.  
16 That would be considering malingering, as we discussed earlier.

17 Q Right, and including - those ways include tests, right,  
18 objective tests?

19 A Your - sorry?

20 Q The ways to determine that a plaintiff might be  
21 malingering include objective tests.

22 A Correct.

23 Q None of which you ran.

24 A Correct. She didn't evidence any symptoms of malingering.

25 Q You don't make any evaluation other than your own judgment

1 as to whether Plaintiff is malingering as to the accuracy of  
2 her reported answers on the Beck test, correct?

3 A Correct.

4 Q And that test is used to determine whether the subject is  
5 currently suffering from anxiety, correct?

6 A Correct.

7 Q Not the cause of that anxiety.

8 A Correct.

9 Q Right, it has nothing to do with what's causing the  
10 anxiety.

11 A Correct.

12 Q Okay. And as far as the Beck Depression Inventory test,  
13 that is another 21-question test, right?

14 A Correct.

15 Q And again, that's a self-report tool.

16 A Correct.

17 Q What does that mean?

18 A It means that the person answers the questions  
19 independently.

20 Q She supplies her own answers.

21 A Right.

22 Q Right. And again, this test only covers a very short  
23 period of time.

24 A Correct.

25 Q How long for this test?

1 A Two weeks.

2 Q Two weeks. So again, it has no relevance whatsoever to  
3 determine whether a plaintiff might have been depressed six  
4 months ago or a year ago or three months ago. It's only for  
5 two weeks.

6 A Correct.

7 Q Okay. And I'll ask you the same question. Don't you  
8 think a plaintiff in an emotion distress lawsuit has an  
9 incentive to exaggerate her answers when she's choosing which  
10 multiple-choice answer to the test she's going to give?

11 A No.

12 Q You take these reported answers at face value, right?

13 A What do you mean by face value?

14 Q It's a self-report tool.

15 A Right.

16 Q So the Plaintiff answers the questions, you take those  
17 answers and you fold them into your analysis, correct?

18 A Correct.

19 Q And again, this test is used to determine whether the  
20 subject might be depressed.

21 A Right.

22 Q It has nothing to do with the cause of that depression,  
23 correct?

24 A Correct.

25 Q They're subjective tests, right?

- 1 A Correct.
- 2 Q Not objective tests.
- 3 A Correct.
- 4 Q But as we talked about before, objective tests for this  
5 kind of thing do exist, do they not?
- 6 A Not specifically, no.
- 7 Q But they do exist to determine whether a plaintiff is  
8 being completely open and honest with you in her answers.
- 9 A Yes.
- 10 Q And one of those is the Millon Clinical Multiaxial  
11 Inventory 4 test?
- 12 A The Millon, yes.
- 13 Q Right. The MCMI test.
- 14 A Correct.
- 15 Q That contains a validity assessment.
- 16 A Correct.
- 17 Q Right. And that validity - that validity assessment  
18 generally measures whether a person was open and honest during  
19 their assessment, correct?
- 20 A Correct.
- 21 Q You didn't perform that test on Ms. O'Brien.
- 22 A Right.
- 23 Q Are you familiar with the Minnesota Multiphasic  
24 Personality Inventory-2 Test?
- 25 A I am.

1 Q We'll call that the MMPI test, fair?

2 A Yes.

3 Q And is it fair to say that that test, among other things,  
4 contains an assessment that can aid someone in your position in  
5 determining whether a patient is faking or telling the truth?

6 A Yes.

7 Q And again, you didn't administer that test.

8 A No.

9 Q If a patient only discloses one source of trauma to you,  
10 then it's reasonable to assume that whatever symptoms you find  
11 are attributable to that trauma, correct?

12 A Correct.

13 Q So you, for example, you testified about some dog bite  
14 cases, some personal injury cases. If somebody comes to see  
15 you with a dog bite, whatever emotional distress they're  
16 suffering can be reasonably attributed to the dog bite, right?

17 A Correct.

18 Q And same with an automobile accident victim. They come to  
19 see you for those purposes, they say they had a really  
20 traumatic car accident. You say okay, you measure their  
21 emotional distress, and it's easy to attribute it to the sole  
22 source of trauma, correct?

23 A Oftentimes, yes.

24 Q If a patient doesn't share a complete and honest history  
25 with you, that would impact your conclusions, right?

1 A Correct.

2 Q So if a patient hid from you potential sources of other  
3 trauma, that would also impact your conclusions, correct?

4 A Correct.

5 Q And then any conclusions that you drew based on that  
6 patient's self-report that hid other sources of trauma wouldn't  
7 be reliable, right?

8 A It would depend on the severity of the trauma.

9 Q That's fair. So I'll rephrase the question. If a  
10 plaintiff hid from you sources of other potentially severe  
11 trauma, any conclusions that you reached based on the  
12 plaintiff's self-report wouldn't be reliable, right?

13 A They would have to be further explored.

14 Q Okay. Let me ask it a different way. The reliability of  
15 your conclusions concerning the cause of a plaintiff's trauma  
16 depends on the plaintiff providing you with full disclosure on  
17 all potentially relevant sources of trauma, correct?

18 A Correct.

19 Q In your report, I notice that you did mention that the  
20 Plaintiff used marijuana, right. Did you consider whether her  
21 daily marijuana use might be a cause of exacerbation for some  
22 of these psychological symptoms you say she exhibits?

23 A No, quite the opposite.

24 Q Okay. You relied on the DSM-5 in reaching your  
25 conclusions?

1 A Correct.

2 Q Did you evaluate Ms. O'Brien for whether she meets the  
3 DSM-5's definition of cannabis use disorder?

4 A I did not.

5 Q Are you familiar with cannabis use disorder?

6 A Somewhat.

7 Q Some of the criteria provided by the DSM-5 for cannabis  
8 use disorder include using cannabis for a minimum of year, used  
9 in larger amounts over a longer time than what was intended.  
10 Using it even in light of the fact that it has negative  
11 consequences, and building a tolerance to cannabis.

12 Do you think if you could do it over again today, you  
13 might analyze Ms. O'Brien for whether she meets that criteria?

14 A I might analyze her, yes.

15 Q Over-use of marijuana can cause in some people negative  
16 psychological consequences, right?

17 A I would assume so. I'm not familiar with marijuana usage.

18 Q Okay. If you're not familiar with marijuana usage,  
19 doesn't it make it difficult for you to eliminate it as a  
20 possible cause of her emotional distress?

21 A No.

22 Q So square that for me, Doctor.

23 A If I'm not familiar with the diagnosis in the DSM-5  
24 regarding cannabis abuse?

25 Q No, general marijuana use and its impact on psychological



1 symptoms. You certainly have experience with people who have  
2 reported to you that they use marijuana, correct?

3 A Sure, yes.

4 Q And it's generally accepted, is it not --

5 A For the most part.

6 Q In the medical field --

7 A Yes.

8 Q That in some patients or some people, marijuana can have  
9 negative psychological consequences, correct?

10 A I'm not familiar with that. I've only seen it as a  
11 resource and a calming effect.

12 Q Okay. Even every day?

13 A I couldn't speak to the duration and intensity of usage.

14 Q Even though you ruled it out as a potential cause in your  
15 report.

16 A I did not rule it out, I didn't explore it.

17 Q Okay. So you talked earlier about this, I had to write it  
18 down, bio-psycho-social.

19 A Yes.

20 Q Remind us what that is.

21 A That's a type of evaluation. So it's a way to organize a  
22 structured interview that focuses on the biological, social,  
23 and psychological symptoms that present a constellation of  
24 symptoms for any human being.

25 Q You didn't do that here, right.

1 A Yes, I did.

2 Q Okay. I thought you testified that you did a structured  
3 interview.

4 A Correct, inherent --

5 Q And as part of that structured interview, you testified on  
6 direct that you explore a history of trauma.

7 A Correct.

8 Q And relationships.

9 A Correct.

10 Q And again, during that structured interview, the patient  
11 didn't mention anything about her relationship with Matthew  
12 Ebert, correct.

13 A Incorrect.

14 Q Other than that she was in a relationship with a person  
15 named Matthew Ebert.

16 A And it was a healthy relationship, correct.

17 Q She told you it was a healthy relationship.

18 A Correct.

19 Q Okay. Assuming that relationship was not healthy,  
20 hypothetically speaking, would that change the conclusions you  
21 render in your report?

22 A There would have to be much more information gathered  
23 regarding what made it unhealthy.

24 Q Assume it was abusive.

25 A That would certainly take precedence in how I questioned

1 her.

2 Q Right. And it would change the reliability of your report  
3 if that were in fact the case, correct?

4 A Not the reliability, it would impact how I defined her  
5 experience of trauma and how she overcame it.

6 Q And the potential causes of that trauma.

7 A Potential factors involved in trauma, yes.

8 Q Did she tell you at the time of the interview that she'd  
9 been in a relationship with Mr. Ebert for several years?

10 A Yes.

11 Q Did she tell you that Mr. Ebert had some money problems,  
12 including bankruptcy?

13 A I don't recall that, no.

14 Q Did she tell you that when she went for a job interview at  
15 the Kimball (phonetic) Center, Mr. Ebert made an anonymous  
16 phone call to the Kimball Center and told them that she was a  
17 drug addict that sued her former employers and sabotaged her  
18 job prospects?

19 A She did not tell me that.

20 Q Is that a sign of a healthy relationship?

21 A It would seem not.

22 MS. KEESLER: Objection, I would say calls for  
23 speculation.

24 THE COURT: I'll allow it.

25 MR. CAVALIER: Did she tell you during the structured

1 interview that Mr. Ebert made multiple anonymous phone calls to  
2 Mr. Roman, the very man she alleges harassed her, and claimed  
3 that she and other women were drug users who were teeing up a  
4 lawsuit against the Forum?

5 THE WITNESS: She did not tell me that.

6 BY MR. CAVALIER:

7 Q Would that have a relevant impact on your - the  
8 reliability of your report had you known it at the time?

9 A No.

10 Q Is that the sign of a healthy relationship?

11 A I don't think so.

12 Q Did she tell you that she falsely accused Mr. Roman of  
13 making the phone call to the Kimball Center and had a lawsuit  
14 filed against her as a result of it?

15 A No.

16 Q Does having pending litigation against you potentially  
17 weigh in someone's emotional distress?

18 A Yes.

19 Q Did she tell you how she felt when she ultimately found  
20 out that her boyfriend, Mr. Ebert, made the phone call to the  
21 Kimball Center and the phone calls to Mr. Roman?

22 A She did not tell me directly.

23 Q We heard testimony on Friday than when she found out about  
24 those actions, she considered breaking up with him, sat in her  
25 car outside her house in tears over it, but couldn't break up

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1 with her because we were just entering into the COVID pandemic,  
2 so they were stuck in the same house after Mr. Ebert's  
3 betrayal.

4 Sitting here on the stand today as an expert witness under  
5 oath, do you believe that that is relevant information that she  
6 should have provided to you?

7 A That is relevant.

8 Q You counsel women who are in abusive relationships, do you  
9 not?

10 A I do.

11 Q The actions that I just described to you that are in  
12 evidence in this case from Plaintiff herself we know Mr. Ebert  
13 took, do those indicate to you that that might be an abusive  
14 relationship?

15 A Might be, yes.

16 Q And again, hypothetically speaking, if Ms. - if Ms.  
17 O'Brien was in an abusive relationship, that could provide an  
18 alternative explanation for her trauma, correct?

19 A An additional one, yes.

20 Q An additional one, assuming, as you did, that she had been  
21 sexually harassed.

22 A Correct.

23 Q You conclude your report with this statement: It is within  
24 a reasonable degree of psychological certainty that these  
25 symptoms and diagnoses are directly attributed to harassment

1 and discrimination that Ms. O'Brien suffered as a subordinate  
2 of Mr. Roman while employed at the Middle East Forum. That's  
3 not a true statement, is it?

4 A Are you asking me a question?

5 Q Yes. That's not a true statement, is it?

6 A Yes, it is a true statement.

7 Q How can it be true after everything we just talked about?

8 A Because based on her explanation of her personality prior  
9 to this event, as well as her current symptomology, there is a  
10 marked difference, and those symptoms are directly attributed  
11 to her experience of sexual harassment.

12 Q Despite her not telling you anything about Matthew Ebert,  
13 despite you agreeing with me that the signs that I described to  
14 you indicated an abusive relationship, and despite you agreeing  
15 with me that they - those - that that abusive relationship  
16 could provide an alternative, in your words, or additional  
17 explanation for her trauma, how can you then say that, sitting  
18 here today under oath, that her symptoms are directly  
19 attributable to something that happened to her at the Middle  
20 East Forum?

21 A This is an example of what we talked about regarding  
22 emotional distress. Unfortunately, as you mentioned, the women  
23 that I counsel who are in abusive relationships often go  
24 through stressors that are unavoidable.

25 An example would be, as you mentioned, she had no other

1 option but to stay in this house with this potential breakup  
2 happening. That's an example of another human experience that  
3 she was experiencing as related to the sexual harassment  
4 symptomology that she was presenting. She was stuck in a  
5 position, but those symptoms that she's presenting are directly  
6 attributed to the sexual harassment.

7 Q Because you say so, right?

8 A Because my expertise points to that way, yes.

9 Q I just want to be very clear on this before I let you,  
10 because frankly, I respect what you do.

11 A Thank you.

12 MR. CAVALIER: In your treatment of women. But I'm  
13 going to ask you again, sitting here under oath as an expert,  
14 sitting here today, knowing what you know now, having read the  
15 deposition transcript that you didn't read before, having heard  
16 what I told about Matthew Ebert, having looked at subsequent  
17 documents concerning dramatic events in the Plaintiff's life,  
18 you cannot say, sitting here today under oath, can you, that it  
19 is within a reasonable degree of psychological certainty that  
20 these symptoms and diagnoses are directly attributed to  
21 harassment and discrimination Ms. O'Brien suffered as a  
22 subordinate of Mr. Roman while employed at the Middle East  
23 Forum.

24 MS. KEESLER: Objection, asked and answered.

25 THE COURT: Sustained.

1 MR. CAVALIER: You couldn't consider the alternative  
2 sources of Plaintiff's trauma if she never told you about them,  
3 right?

4 MS. KEESLER: Objection, asked and answered.

5 THE COURT: Sustained.

6 MR. CAVALIER: Is it fair to say Plaintiff wasn't  
7 fully honest with you in describing her history?

8 THE WITNESS: Yes.

9 MR. CAVALIER: Nothing further.

10 THE COURT: Ms. Keesler, redirect?

11 REDIRECT EXAMINATION

12 MS. KEESLER: Yes, thank you.

13 Dr. Kubala, Defense just asked you whether - whether  
14 the facts - the fact remains is you don't know for sure whether  
15 Ms. O'Brien was involved in an abusive relationship, correct?

16 THE WITNESS: Correct.

17 BY MS. KEESLER:

18 Q Okay, and during the structured interview, she did not  
19 describe her relationship as abusive, correct?

20 A Correct.

21 Q Okay. So really, it - you - I know that you're an expert  
22 working with sexual trauma victims. You would need more  
23 information essentially to make a determination such as that,  
24 correct?

25 A Correct.



1 Q Now, being in an abusive relationship could be another  
2 source of stress, is that correct?

3 A Correct.

4 Q Okay. But that doesn't necessarily mean that the  
5 emotional distress is wholly attributed to the abusive  
6 relationship if there's another concerning or presenting  
7 source, correct?

8 A Correct.

9 Q And in fact, if she were in an abusive relationship and  
10 she also reported to emotional distress related to harassment  
11 and discrimination at work, that would actually be emotional  
12 distress that was exacerbated by her work environment, correct?

13 A Correct.

14 Q In other words, it would have worsened whatever emotional  
15 distress she may have been suffering from an abusive  
16 relationship, correct?

17 A Correct.

18 Q If it were determined that these actions by Mr. Ebert that  
19 Defense informed you about, if those were determined to have  
20 occurred after she left her employment with MEF, that would be  
21 subsequent emotional distress, correct?

22 A Correct.

23 Q And so the emotional distress that she suffered as a  
24 result of harassment and discrimination would have predated  
25 that, correct?

1 A Correct.

2 Q I'd also like to ask about the measures. Counsel asked  
3 you about two other measures. I'm going to use the acronyms,  
4 the MCMI, sorry, and the MMPI. Those two measures are also  
5 self-reporting measures, correct?

6 A Correct.

7 Q In other words, the individual has to answer questions to  
8 those tests, correct?

9 A Correct.

10 Q So it's based on what she provides, correct?

11 A Correct.

12 Q And in fact those tests only include two responses, true  
13 or false, correct?

14 A Correct.

15 Q And why is it that you felt it was unnecessary to  
16 administer the MMPI or the MCMI with respect to Ms. O'Brien's  
17 evaluation?

18 A They've very long. One of them is a 567-item measure, the  
19 other one I believe is around 195 questions. It just seems a  
20 little bit extraneous. A good example is if you go into the  
21 hospital with an injured ankle, it's sort of like doing  
22 exploratory surgery before stepping back and doing an exam and  
23 then possibly an x-ray and possibly an MRI.

24 This going to those very long, daunting measures  
25 seems unnecessary.

1 Q And earlier you had mentioned on direct that during her  
2 interview she did present with indicators of a personality  
3 disorder, correct?

4 A Correct.

5 Q Okay, so would you administer a personality inventory if  
6 you did not find there were concerns for a personality  
7 disorder?

8 A No, I would not.

9 Q So in other words if you find that to be extraneous -

10 A Correct.

11 Q And would you find that - that would - that - that  
12 applying an unnecessary measure would unnecessarily fatigue the  
13 individual whom you are evaluating?

14 A Again, as we discussed earlier, there are several reasons  
15 that you would not, mainly fatigue, literacy concerns. And  
16 again just, that's over 700 questions to ask somebody in a  
17 sitting.

18 Q Okay. And something I wanted to clarify because Counsel  
19 brought it up with respect to the MCMI and MP - MMPI in that  
20 they contain validity measures. You didn't - did you have any  
21 concerns of validity when you interview Ms. O'Brien?

22 A I did not.

23 Q Okay. And I just want to really make this distinction,  
24 when you described what malingering was, that is with respect  
25 to whether the individual is exaggerating their symptoms,

1 correct?

2 A Correct.

3 Q Okay. You're not here as an expert to make any factual  
4 determinations as to Ms. O'Brien's claims of harassment and  
5 discrimination, correct?

6 A Correct.

7 Q Okay, so malingering doesn't refer to, oh, Ms. O'Brien  
8 lied about harassment and discrimination, correct?

9 A Correct.

10 Q It's rather a focus on whether there's a presentation of  
11 exaggeration of symptoms.

12 A Correct.

13 Q And it's - it's true to say that you had no concerns of  
14 malingering in this instance, correct?

15 A No, correct.

16 Q Now, Counsel brought up an issue regarding Ms. O'Brien's  
17 marijuana use and whether that could exacerbate symptoms, and  
18 you mentioned quite the opposite. Could you elaborate on what  
19 I guess you were trying to say?

20 A My understanding of Ms. O'Brien's marijuana usage was to  
21 help her with her sleep disturbance that she began suffering  
22 following the sexual harassment. So she would use marijuana at  
23 night to help her fall asleep and stay asleep.

24 Q Okay, how is that clinically relevant in light of what she  
25 reported to you and your diagnosis of Generalized Anxiety

1 Disorder?

2 A It doesn't - it's not relevant.

3 Q I mean, in terms of - let me step back for a second. Are  
4 you aware that some individuals may use marijuana to self-  
5 medicate?

6 A Yes.

7 Q Okay, and was there an indicator that she was using it  
8 self-medicate symptoms related to her Generalized Anxiety  
9 Disorder?

10 A Those symptoms were what was preventing her from falling  
11 asleep and staying asleep, so they were connected.

12 Q Okay, because she reported sleep disturbance to you,  
13 correct?

14 A Correct, and severe nightmares.

15 Q And why is it that you did not - hold on a minute. Did  
16 she present with any concerns of overuse of marijuana during  
17 her interview?

18 A No.

19 Q Counsel brought up whether you considered cannabis use  
20 disorder, is that correct?

21 A Correct.

22 Q Okay, are you familiar with the diagnostic criteria of  
23 cannabis use disorder?

24 A Mildly.

25 Q Okay. That disorder is contained in the DSM-5, correct?

1 A Correct.

2 Q If I were to show you, I guess, the diagnostic criteria of  
3 that disorder, would you be able to make a determination today  
4 based on what was presented to you during the evaluation as to  
5 whether that would have been the appropriate diagnosis in this  
6 case?

7 A Yes.

8 MS. KEESLER: May I approach the witness?

9 THE COURT: You may approach.

10 THE WITNESS: Thank you.

11 MS. KEESLER: Dr. Kubala, just take your time to  
12 review that and let me know when you're done.

13 Oh, and just for the record, Dr. Kubala, you are  
14 looking at the DSM-5 manual, correct?

15 THE WITNESS: Correct.

16 BY MS. KEESLER:

17 Q Thank you.

18 A Okay, finished.

19 Q After reviewing the diagnostic criteria for cannabis use  
20 disorder, would you have diagnosed Ms. O'Brien with that  
21 disorder over Generalized Anxiety Disorder based on the  
22 symptoms that she presented to you and after reviewing the -  
23 her responses to the measures?

24 A No.

25 Q And why is that?

1 A Even in the first couple examples, it talks about a desire  
2 to want to cut down the usage of cannabis and not being able  
3 to, therefore indicating some sort of an addiction or something  
4 like that. Ms. O'Brien did not communicate any concern with  
5 her usage or desire to reduce the amount that she was using.

6 Q Okay. If hypothetically an individual were to report to  
7 you that they take marijuana mainly for sleep and take three or  
8 four hits each night, mainly for sleep, would that indicate an  
9 abuse of marijuana?

10 A No.

11 Q Okay. And marijuana is - or sorry. Use of recreational  
12 marijuana is legal in New Jersey, correct?

13 A Correct.

14 Q Okay. Now, I understand that Counsel asked you whether it  
15 would have been relevant to have this additional information  
16 that apparently may not have been disclosed during the history.  
17 However, despite that information not having been disclosed,  
18 you still hold your opinion today that the emotional distress  
19 that Ms. O'Brien suffered was a result of the harassment and  
20 discrimination during her employment at Middle East Forum.

21 A Yes, I do.

22 Q And why is that?

23 A Actually, in light of this information it just highlights  
24 her strength and how she was able to overcome other stressors  
25 that she experienced as a human being with relationship issues,

1 what sounds like housing issues. That to me is more of a  
2 strength than it is a deterrent in terms of her diagnostic  
3 symptoms.

4 Q Is it fair to say that her symptoms or the lingering  
5 symptoms she still experiences is a result of the harassment  
6 and discrimination, whereas she has overcome the other stresses  
7 in her life?

8 A Correct.

9 MS. KEESLER: Okay. Thank you, I don't have anything  
10 further, Dr. Kubala.

11 THE COURT: Attorney Cavalier?

12 MR. CAVALIER: Just very briefly.

13 THE COURT: Yes.

14 RECROSS EXAMINATION

15 BY MR. CAVALIER:

16 Q You talk about how you were holding on to your conclusion  
17 that the sexual harassment that you found is the cause of the  
18 trauma is because that predated the information you now know  
19 about her relationship with Matthew Ebert and these other  
20 factors she didn't disclose to you, correct?

21 A Correct.

22 Q So you talked about that as a particular exacerbation  
23 source of the trauma, correct?

24 A Correct.

25 Q The tests you ran only looked back one and two weeks,



1     respectively, right?

2     A     Correct.

3     Q     So there's really no way for you to sit here and opine  
4     with any kind of expertise about what caused what and when,  
5     right?

6     A     Well, you use the measures as a way to complete the  
7     questionnaires that you ask the client. So you go back through  
8     the measures with the client and look at how they answered, and  
9     then you pay attention to the frequency, intensity, and  
10    duration of those symptoms.

11    Q     You testified that you didn't run any of the tests I asked  
12    you about because they were really long and they, quote, Seemed  
13    unnecessary.

14    A     That's one reason, correct.

15    Q     Don't you think you have an obligation to run whatever  
16    relevant tests might be out there before you accuse someone of  
17    sexual harassment?

18    A     Yes, I do.

19    Q     Okay.

20    A     That's what was done.

21                 (Simultaneous speaking.)

22                 MS. KEESLER: Just one follow-up.

23                 THE COURT: I'll allow it.

24                         REDIRECT EXAMINATION

25                 MS. KEESLER: Thank you. Dr. Kubala, there is no

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1 requirement that every expert administer the exact same tests,  
2 correct?

3 THE WITNESS: Correct.

4 BY MS. KEESLER:

5 Q In fact, it's based on the discretion of the expert or the  
6 licensed psychologist to determine which measures are  
7 appropriate based on the presenting symptoms and the  
8 information that is provided, correct?

9 A Correct.

10 MS. KEESLER: I have nothing further.

11 THE COURT: All right, thank you, Doctor, we  
12 appreciate it, you may step down.

13 THE WITNESS: Thank you very much.

14 THE COURT: Ladies and gentlemen, it's a little late  
15 for our morning break, but we'll take it now, okay.

16 (Whereupon, the above-entitled matter went off the  
17 record at 11:16 a.m. and resumed at 11:38 a.m.)

18 THE COURT: A couple of things if we can before we  
19 bring the jury back in. I wanted to talk a bit about what Ms.  
20 Dibianca handed up to us this morning. I have a couple of  
21 thoughts on this, but if I may ask, how are you intending to  
22 use this? There's a resume in here. There's, it seems like,  
23 some fill in the caption type of form, but there's also  
24 impressions of HR people from --

25 MS. DIBIANCA: Oh, right, I wouldn't be using that.

1 THE COURT: Okay.

2 MS. DIBIANCA: Basically the resume and the cover  
3 letter.

4 THE COURT: And what would be the objection to that?

5 MS. SHIKUNOV: Well, it was disclosed to me as a  
6 packet and that the entirety of the packet was being entered  
7 into evidence and then published to the jury, and I don't  
8 really think that it's fair to have the impressions of a  
9 recruiter, or a log such that, again, when I -- I haven't seen  
10 this before the middle of trial and the jury is already  
11 empaneled, so --

12 THE COURT: Well, certainly that part --

13 MS. SHIKUNOV: Yes.

14 THE COURT: -- bothered me too. There's no doubt  
15 about it, but Attorney Dibianca's representation that that is  
16 not something we would put before the jury --

17 MS. SHIKUNOV: I mean, obviously there's a cover  
18 letter and resume. She can authenticate that. I don't have  
19 bones with that.

20 THE COURT: Okay, I guess one question would be if  
21 it's going to be an exhibit, we'll have to find a way that it,  
22 you know, that -- I think that to the extent you didn't already  
23 have the resume, it was probably something you, you know, that  
24 was --

25 I'm guessing, correct me if I'm wrong, but was

1 incorporated in the document production demands made back when,  
2 and just getting it today doesn't seem to be the -- you know,  
3 that's not the fault of anybody here in this courtroom today,  
4 but if we do have to present it as an exhibit, we do need to  
5 make sure it doesn't bring in things that are hearsay of HR  
6 reps or things that we can't authenticate.

7 MS. DIBIANCA: So, we can fix the problem. I  
8 produced this as I received it because I didn't want Ms.  
9 Shikunov to feel that I was holding back, so I just turned over  
10 everything I got, but what we can do is just admit -- take the  
11 pieces out that are objectionable and just move the resume and  
12 the cover letter.

13 THE COURT: And that just look like the first page,  
14 Attorney Dibianca, front and back?

15 MS. DIBIANCA: Yes, so there's a page one. Actually,  
16 Rich, if you want to pull it up, we can just look at it on the  
17 screen, but the first page and the second page, which is the  
18 back of the first.

19 THE COURT: So, the front and back?

20 MS. DIBIANCA: Right, and then skip ahead to, through  
21 the sort of forms, and then there's, I thought her resume was  
22 in here as well.

23 PARTICIPANT: I think it's actually at the bottom of  
24 this.

25 MS. DIBIANCA: No, there was a separate one with a

1 header on it, this one. Yes, thanks, Rich. Resume for -- it  
2 says candidate profile and resume for Marnie O'Brien just like  
3 a sort of shaded bar at the top. It's at the very end.

4 THE COURT: Oh, I do see that, okay.

5 MS. DIBIANCA: Yeah, towards the very end.

6 THE COURT: And that would just be one-sided,  
7 correct, one page?

8 MS. DIBIANCA: That's just one page --

9 THE COURT: Okay.

10 MS. DIBIANCA: -- correct, Your Honor, and then the  
11 next page looks like another cover letter, but without the date  
12 on it.

13 THE COURT: It almost seems like the resume --

14 MS. DIBIANCA: And let me just compare it. It may be  
15 exactly --

16 THE COURT: Someone cut and paste --

17 MS. DIBIANCA: It's actually -- I can just use the  
18 first page. So, all I need, Your Honor, is the first page,  
19 front and back, and then the resume that we just looked at with  
20 the shaded bar at the top.

21 THE COURT: Okay.

22 MS. DIBIANCA: So, I can have Mr. Hobbs take out the  
23 other pages from the one that we'll publish to the jury.

24 THE COURT: If you would, that would be --

25 MS. DIBIANCA: Yeah.

1 THE COURT: -- terrific, and then we'll sort out  
2 before exhibits go to the jury how we get a clean copy of this.

3 MS. DIBIANCA: Okay, okay.

4 THE COURT: Okay?

5 MR. HOBBS: And just to be clear, Molly, this is the  
6 page of the resume?

7 MS. DIBIANCA: That's the page of the resume.

8 MR. HOBBS: And the cover page?

9 MS. DIBIANCA: Yeah.

10 MR. HOBBS: And then one other page after that?

11 MS. DIBIANCA: Yes.

12 MR. HOBBS: So, three pages?

13 MS. DIBIANCA: Correct.

14 MR. HOBBS: Got it.

15 MS. DIBIANCA: Correct.

16 THE COURT: Okay.

17 MS. SHIKUNOV: I have no problem with it.

18 THE COURT: Thank you. I appreciate that.

19 MS. DIBIANCA: Thank you.

20 THE COURT: We always have wrinkles to iron out  
21 during a trial, right, but there's no exception here. Oh, by  
22 the way, we did hear from the juror who took ill last week, and  
23 he's well and said thank you for everybody's concerns for him.

24 MS. DIBIANCA: That was nice of him.

25 THE COURT: Yeah, it was very --

1 MS. DIBIANCA: Yeah.

2 THE COURT: It seemed it was a bad episode of short  
3 duration, thankfully.

4 MS. SHIKUNOV: Well, you know, I can honestly say  
5 that's never happened to me before, so.

6 THE COURT: Yeah, never made a juror sick you said,  
7 right?

8 MS. SHIKUNOV: Yes, that's a new experience for me.

9 THE COURT: All right, so we'll bring in the jury.  
10 We'll have to break for lunch.

11 MS. DIBIANCA: Yes, yes.

12 THE COURT: Okay, so if that clock is right, it's  
13 about 20 to 12:00. Is that right?

14 MS. DIBIANCA: Yes.

15 MS. SHIKUNOV: Yes.

16 THE COURT: So, how long do you figure until we take  
17 a break, maybe an hour?

18 MS. DIBIANCA: The easiest thing for me to do would  
19 be you tell me what time you want to break and I will stop at  
20 that time.

21 THE COURT: Let's say about an hour --

22 MS. DIBIANCA: Deal.

23 THE COURT: -- but it's not a hard deadline. If  
24 there's a natural breaking point --

25 MS. DIBIANCA: Okay.

1 THE COURT: -- around an hour in --

2 MS. DIBIANCA: Okay.

3 THE COURT: Okay, sound fair?

4 MS. DIBIANCA: No problem, and the same thing, Your  
5 Honor, for this afternoon for the afternoon break, if you could  
6 just tell me what time you want that to be when we come back,  
7 I'll just stop at that time. I can do it no problem.

8 THE COURT: Again --

9 MS. DIBIANCA: Yeah.

10 THE COURT: -- when it's a good break time --

11 MS. DIBIANCA: Okay, okay.

12 THE COURT: -- I'll leave it to counsel.

13 MS. DIBIANCA: Okay.

14 THE COURT: Okay?

15 MS. DIBIANCA: Got it.

16 THE COURT: All right.

17 THE CLERK: All rise.

18 (JURY ENTERS COURTROOM.)

19 PARTICIPANT: Should Marnie take the stand, Your  
20 Honor?

21 THE COURT: That would be fine, sure.



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1           THE COURT: Ms. O'Brien, let me know if there's water  
2 in there when you get up there. There is? Okay. Welcome  
3 back, folks. We figure we'll do about an hour of testimony  
4 before lunch give or take and then we'll take our lunch break,  
5 okay? Attorney Dibianca?

6           MS. DIBIANCA: Thank you.

7 CROSS-EXAMINATION

8 BY MS. DIBIANCA:

9 Q Good morning, Ms. O'Brien.

10 A Good morning.

11 Q You remember that we met previously in January of this  
12 year when I took your deposition, correct?

13 A Correct.

14 Q Okay, if you can speak up just a little bit for me? And  
15 at that deposition, you testified under sworn testimony under  
16 penalty of perjury, correct?

17 A Correct.

18 Q And you testified truthfully during that deposition, is  
19 that correct?

20 A Correct.

21 Q Okay, we may need to refer to your deposition today for  
22 some period of time. I see you have your glasses on, so when  
23 that happens, we'll put it up on the screen and you can refer  
24 to it. During your deposition, Ms. O'Brien, you told me your  
25 version of events, correct?

1 A Correct.

2 MS. DIBIANCA: Okay, I'd like to put to the witness  
3 before publication to the jury DX39, please.

4 BY MS. DIBIANCA:

5 Q Ms. O'Brien, can you review that and tell me if that is  
6 something, a document you're familiar with?

7 A Yeah, it looks like it. I guess I had the number wrong  
8 though.

9 MS. DIBIANCA: Okay, so we can publish it to the jury  
10 at this time. Thank you.

11 BY MS. DIBIANCA:

12 Q This DX39, Ms. O'Brien, is your offer letter, correct?

13 A Correct.

14 Q And I should specify your offer letter from the Middle  
15 East Forum, correct?

16 A Correct.

17 Q And you were hired by the Forum in June 2016, is that  
18 correct?

19 A Correct.

20 Q You resigned from the Forum in March 2020, correct?

21 A It was February 29, I believe.

22 Q February 28?

23 A Yes.

24 DEPUTY STEIN: Can you speak a little bit more  
25 loudly, please? Thank you.

1 BY MS. DIBIANCA:

2 Q You were hired pursuant, according to this offer letter,  
3 you were hired as the controller, correct?

4 A Correct.

5 Q And at some point, you started to use the title of  
6 director of administration and finance, correct?

7 A Correct.

8 Q Okay, what time did you start using the title of director  
9 of administration and finance at the Middle East Forum?

10 A When you say I started using, I was given the title.

11 Q Okay, and when was that?

12 A I don't recall.

13 Q Okay, you were not a bean counter, were you, Ms. O'Brien?

14 A That's my main function, but --

15 Q Director of administration and finance is a bean counter?

16 A I picked up additional responsibilities.

17 Q You were a little above a bean counter, correct?

18 A Correct.

19 Q Correct. At the time you were hired --

20 A When you say above, what do you mean above? I just had --  
21 I wasn't above a bean counter. I had added responsibilities.

22 Q Such as?

23 A I picked up the grants and then I picked HR --

24 (Simultaneous speaking.)

25 Q Well, you were hired for HR, correct?

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1 A -- HR generalist. Well, I didn't start with that because  
2 there was issues to handle with the controllers.

3 Q Well, let's look at your offer letter, DX39. Take a look  
4 at that and tell me if that offer letter says that you were  
5 hired to do human resources --

6 A It was -- that was one of the reasons.

7 MS. DIBIANCA: Let me finish the question, please.

8 THE COURT: Folks, we can't talk over each other,  
9 okay?

10 THE WITNESS: I'm sorry.

11 BY MS. DIBIANCA:

12 Q The offer letter says that you were responsible for human  
13 resources functions, correct?

14 A Some human resources work, yeah.

15 Q And at your deposition, do you recall that we talked about  
16 your human resource experience, Ms. O'Brien?

17 A Yes.

18 Q Okay, and do you recall at your deposition that you  
19 testified that you were hired to perform human resources  
20 functions for the Forum, correct?

21 A Correct.

22 Q Okay, at the time you were hired, you were told that you  
23 would not receive healthcare benefits, is that correct?

24 A That's correct.

25 Q Okay, who was your direct supervisor, Ms. O'Brien?

1 A Mr. Roman.

2 Q Let's talk about your HR responsibilities. During your  
3 tenure with the Forum, you were responsible for the  
4 organization's human resources functions, correct?

5 A Yes.

6 Q And you were the only person who was responsible for the  
7 human resources functions in the organization, correct?

8 A No.

9 Q Did you have someone who reported to you?

10 A No, Marc Fink, who is the in-house counsel, he was the one  
11 that was -- he would handle the offer letters and the higher-  
12 level stuff. I was a generalist, some human resources  
13 responsibilities. I was onboarding and creating, creating an  
14 onboarding process, termination process, employee reviews, that  
15 sort of thing. I don't have any certifications for human  
16 resources.

17 Q When you applied for the position, you told Mr. Roman and  
18 Dr. Pipes that you did have prior human resource experience,  
19 didn't you?

20 A I did, in exactly those things that I had just said.

21 Q Okay, and you said that you attended employees' annual  
22 reviews, correct?

23 A I did.

24 Q Okay, as the HR person, correct?

25 A Correct.

O'BRIEN-102

1 Q You considered yourself a management level employee at the  
2 Forum, correct?

3 A I was told I was by Mr. Roman.

4 Q And Dr. Pipes, I believe you testified last week, correct?

5 A That they considered me management.

6 Q So, you were considered by the organization to be a  
7 management level employee, correct?

8 A That's what I was told.

9 Q You testified last week that you wanted to grow the  
10 organization tenfold I believe was the quote, right?

11 A No, Mr. Roman said that he -- I don't think I ever said  
12 tenfold. Mr. Roman said that he wanted to grow the  
13 organization to a \$20 million a year organization and I was  
14 excited to help and be a part of that.

15 Q And when Mr. Roman left on business trips, he put you in  
16 charge of the office sometimes, didn't he?

17 A In charge in what way? What do you mean in charge?

18 Q There's an email, isn't there, that when Mr. Roman is  
19 traveling, he says, Marnie, you're in charge of the office  
20 while I'm out?

21 A Okay, but I'll say that no one was really in charge of  
22 anything. That meant that if there was an issue, they brought  
23 it to me and I was the point to go to him on those issues.

24 Q Him who?

25 A Gregg, Mr. Roman.

O'BRIEN-103

1 Q And when he was out?

2 A When he was out. If he wasn't there, then I would report  
3 to him anything that was happening --

4 Q Okay.

5 A -- that was brought to me.

6 Q Mr. Roman traveled quite a bit, didn't he?

7 A Yes.

8 Q Would you agree with me that he traveled sometimes upwards  
9 of 200 days a year?

10 A I would have no idea.

11 Q Okay, you would agree with me, Ms. O'Brien, that HR is a  
12 tough job, isn't it?

13 A Yes.

14 Q Sometimes in HR, you have to make tough decisions, don't  
15 they?

16 A That's correct.

17 Q Sometimes those decisions that you have to make in HR are  
18 unpopular decisions, aren't they?

19 A That's correct.

20 Q And as HR, you sometimes have to be the unlucky one to  
21 break bad news, don't you?

22 A I'm not sure what you mean, but --

23 Q Have you ever had to fire anyone as human resources?

24 A Sure.

25 Q That's bad news, isn't it?

O'BRIEN-104

1 A Sure.

2 Q Right, and so when you deliver that news, you would agree  
3 with me that that's bad news that the HR person is delivering?

4 A Yes.

5 Q Okay, sometimes HR has to be the one to impose discipline,  
6 correct?

7 A Impose? I mean, document. I didn't determine discipline  
8 for people. If there was discipline to be made or, you know,  
9 to be laid out, I documented it and suggested, you know, for  
10 the four guidelines that are in there. First, it's a verbal  
11 warning, a write-up, that type of thing.

12 Q And when you say in there, you're referring to the Forum's  
13 personnel manual?

14 A Correct.

15 Q You said documenting, Ms. O'Brien. Do you agree with me  
16 that as a human resource professional, documenting things is of  
17 paramount importance?

18 A Yes.

19 Q Okay, as human resources at the Forum, you were  
20 responsible for managing and developing employee relationships,  
21 correct?

22 A Correct.

23 Q And for maintaining a friendly work environment, correct?

24 A That's in my job description that I was to maintain a  
25 friendly work environment?



1 Q No, ma'am, I'm asking you if as HR, you were responsible  
2 for maintaining a friendly work environment?

3 A I don't see how that would be my job. I was required to  
4 make sure everyone was behaving appropriately or respecting  
5 each other.

6 MS. DIBIANCA: Let's look at DX136, please, second  
7 page at the top. It says oversee human resources. Actually,  
8 let me just introduce this document. This is, if you can go  
9 back to the first page, Mr. Hobbs, DX136 and we're publishing  
10 this to the jury as --

11 THE WITNESS: I'm sorry, what is this?

12 MS. DIBIANCA: This is your cover letter that you  
13 submitted to People Share.

14 THE WITNESS: Okay.

15 BY MS. DIBIANCA:

16 Q Does this look familiar to you?

17 A Sure.

18 Q Okay, so we'll look at the top of the second page, Ms.  
19 O'Brien. The second bullet there says oversee human resources.  
20 Do you see where he's highlighted there?

21 A Yes.

22 Q Okay, the fourth bullet says work directly with the  
23 director to maintain and efficient and financially healthy  
24 office and friendly work environment. Do you agree with that?

25 A Yes.

1 Q Okay, so --

2 A That it's on my resume, yes.

3 Q It's on your resume, correct?

4 A Yes.

5 Q And, in fact, that was part of your job description and  
6 that's why you wrote it on your resume, correct?

7 A It was what I was tasked with.

8 Q Okay, at the American Institute for History Education  
9 where you worked prior at some point prior to coming to the  
10 Middle East Forum, you also oversaw human resources, correct?

11 A Correct.

12 Q And in that role, you were responsible for recruiting,  
13 managing, and maintaining healthy employee relationships,  
14 correct?

15 A Correct.

16 Q Okay, so maintaining healthy employee relationships, and  
17 healthy office, and friendly work environments have been part  
18 of your job duties as a human resources professional since at  
19 least 2013, correct?

20 A Correct.

21 Q Okay, now as human resources, you would agree, Ms.  
22 O'Brien, wouldn't you, that you should conduct yourself in a  
23 professional manner at all times in the workplace, correct?

24 A Correct.

25 Q Okay, and that HR sets the tone for the expected conduct

O'BRIEN-107

1 in the office, correct?

2 A I would disagree.

3 Q Okay, does HR have a role in setting the tone for the  
4 workplace environment?

5 A HR is a place where employees come if they need assistance  
6 or help. They're supposed to get their -- I'm supposed to make  
7 sure everyone has, knows their job, has a good job description.  
8 They know what's expected of them. I did the payroll. I  
9 didn't -- the management, the actual management sets the tone  
10 and I make sure that the organization is protected.

11 Q Okay, you made sure that the organization was protected,  
12 is that what I just heard you say?

13 A Yes.

14 Q Okay, so you would agree with me then that a bad decision  
15 by an HR person could expose the organization to significant  
16 liability, don't you? You testified --

17 A Yes, yes.

18 Q -- to that at your deposition, didn't you?

19 A Yeah, I just said yes.

20 Q Okay, and you would agree with me that HR is a position of  
21 trust within an organization, correct?

22 A Yes.

23 Q And you would agree with me that HR has a higher duty to  
24 the company than the average employee, wouldn't you agree?

25 A Yes.

O'BRIEN-108

1 Q Let's talk about the Forum's handbook, please. The Forum  
2 had an employee manual as you said, didn't it, Ms. O'Brien?

3 A Yes.

4 Q Okay, and you were, in fact, asked to provide your input  
5 as the human resources person on the handbook, correct?

6 A I was asked to review it and make edits and suggestions.

7 Q Okay, did you make edits and suggestions to the handbook?

8 A Yes, I never received them back, it was never published,  
9 it was never changed. The original was kept.

10 Q Okay, you presented changes in the handbook at an all-  
11 staff meeting, didn't you?

12 A They may have been not -- so maybe I'm misunderstanding  
13 the time that you're talking about because towards the end, I  
14 was asked to review the entire thing. I don't know what  
15 changes you're talking about, so if you want to show them to  
16 me, I'll look at them and I can maybe try to remember, but I  
17 can't have a conversation about something that I don't know and  
18 it happened three years ago.

19 (Simultaneous speaking.)

20 Q Pardon me, I'm sorry. I didn't mean to interrupt you.

21 A It happened quite a few years ago. I don't know exactly  
22 what you're speaking about.

23 Q Did the handbook have a harassment policy?

24 A It did. Are you going to share it with me?

25 Q The Forum had an anti-harassment policy throughout your

1 employment, didn't it?

2 A Yes.

3 Q Let's look at the harassment policy, DX123, and let's go  
4 to D1034 of the harassment policy, please, and then 1035  
5 actually.

6 A That was not the one that we used. The one that we used  
7 had parentheses and said that it was edited in, I forget  
8 exactly, but that wasn't the one that we used, I don't believe.  
9 Is this the one that was presented at the meeting?

10 Q Yes, ma'am.

11 A Okay.

12 Q So, let's go to the harassment policy. Just to be clear  
13 on your testimony, are you debating that this is the -- are you  
14 disputing that this is the correct manual?

15 A I'm unsure, but I'll look at it.

16 Q Okay, I have a 2015 version as well if you prefer to see  
17 that. The policies are identical, but I'm happy to share that  
18 with you.

19 A I assume that might be it.

20 Q Okay, so let's look at the --

21 A Can I just say that I may have been involved in this, but  
22 this is -- the one that I said that was never published then  
23 was after this. This is confusing to me. I'm sorry, go ahead.

24 Q Ma'am, on April 17, 2018, did you present anti-harassment  
25 training at the Forum?

O'BRIEN-110

1 A Yes.

2 Q Okay, do you know which policy, which version of the  
3 manual you presented at that time?

4 A It wouldn't have been this one because this says 2019.

5 Q So, would you like to look at the 2015 manual?

6 A No, that's fine. I was just --

7 PARTICIPANT: If you're interested, it's DX14.

8 MS. DIBIANCA: DX14, please.

9 BY MS. DIBIANCA:

10 Q This says May 2015, Ms. O'Brien. Does this look better  
11 for you?

12 A I think that was the one I remember, yeah.

13 Q Let's go ahead and look at the harassment policy in this  
14 version then. Does that look familiar?

15 A Yes.

16 MS. DIBIANCA: All right, Mr. Hobbs, if we can turn  
17 to the next page of the document? The next one, sorry.

18 BY MS. DIBIANCA:

19 Q All right, let's look at the section titled reporting and  
20 investigation. Do you see here that it says that if you  
21 believe you are the victim of impermissible harassment or you  
22 become aware of another employee who is being subjected to  
23 impermissible harassment, you must promptly report the facts of  
24 the incident to your supervisor or to the president or the  
25 director? Did I read that correctly?

O'BRIEN-111

1 A Yes.

2 Q You do allege, Ms. O'Brien, that you were subject to  
3 impermissible harassment, correct?

4 A I do.

5 Q Okay, and you do allege that you witnessed another  
6 employee being subjected to impermissible harassment, correct?

7 A I do.

8 Q Okay, Ms. O'Brien, you would agree with me that you did  
9 not report either the incident that you believe constituted  
10 sexual harassment as to yourself or the incident that you  
11 believe constituted harassment as to another employee promptly?  
12 Would you agree with that statement?

13 A I do.

14 Q Okay, in fact, the incident that you're talking about with  
15 respect to the other employee is the incident at AIPAC that you  
16 described with Ms. McNulty, correct?

17 A Mm-hmm.

18 Q I need --

19 A Yes, sorry.

20 Q You never reported the incident at AIPAC to Dr. Pipes,  
21 correct?

22 A I did not.

23 Q You agree with me you did not report it?

24 A I did not.

25 Q In fact, the only conduct that you complained of on behalf

O'BRIEN-112

1 of yourself were the, quote, vibes, that you got from Mr. Roman  
2 at a dinner at a sports bar, correct?

3 A Correct.

4 Q Okay, let's go to the harassment training. In February  
5 2018, Mr. Roman told you that he wanted you to present anti-  
6 harassment training at the Forum's annual all-staff meeting,  
7 correct?

8 A Correct.

9 Q Okay, so you started planning that as soon as he requested  
10 it in February, correct?

11 A Correct.

12 Q Okay, you did plan and present that training in April  
13 2018, correct?

14 A Yes.

15 Q And you gave that presentation to employees during an in-  
16 person training session on April 17, 2018, correct?

17 A Yes.

18 Q Lisa Barbounis was present for the anti-harassment  
19 training?

20 A Yes.

21 Q Ms. McNulty was also present for the harassment training?

22 A Yes.

23 Q And Katrina Brady, she also was present for that training,  
24 correct?

25 A Yes.



O'BRIEN-113

1 Q At the time you presented as the HR person, at the time  
2 you presented the anti-harassment training, you understood what  
3 the definition of harassment was, correct?

4 A Correct.

5 Q And you would agree with me that as an HR professional, it  
6 was, in fact, your job to understand what harassment was,  
7 correct?

8 A Correct.

9 Q You would agree with me, wouldn't you, that as an HR  
10 professional, it was, in fact, your job to stop harassment  
11 should you see it, correct?

12 A Correct.

13 Q You would agree that as the HR person, it could cause  
14 serious harm to the Forum if you failed to timely report a  
15 complaint of harassment, correct?

16 A Correct.

17 Q No one raised any issues or concerns about harassment  
18 during that training, did they?

19 A No.

20 Q You didn't take Ms. McNulty aside after the training and  
21 speak to her about what you claim to have witnessed at AIPAC,  
22 correct?

23 A No.

24 Q Correct?

25 A Correct.

O'BRIEN-114

1 Q Okay, you didn't pull Ms. Barbounis aside and say, Ms.  
2 Barbounis, do you have any concerns about harassment, correct?

3 A I did not.

4 Q Okay, the same thing with Ms. Brady, correct? You didn't  
5 pull her aside and speak to her about whether she had any  
6 concerns about harassment training?

7 A I did not.

8 Q Mr. Roman wasn't present for that training, was he?

9 A I think he was there for part of it. I can't really  
10 remember.

11 Q And there was part of it at least that you recall where he  
12 was not present and the women would have been able to speak  
13 freely in front of you, and you alone, without Mr. Roman  
14 present, correct?

15 A Correct.

16 Q Okay, did the women trust you, Ms. O'Brien?

17 A No, they did not.

18 Q No, they did not, okay. Let's talk about your  
19 relationship with your coworkers. From time to time, you did  
20 go out socially with some of your coworkers from the Forum,  
21 correct?

22 A Correct.

23 Q For example, you went out for drinks from time to time  
24 with your coworkers, right?

25 A Correct.

O'BRIEN-115

1 Q You thought it was a good idea to get together with those  
2 with whom you work so you could blow off some steam, correct?

3 A We were a small group, so we worked together, so it was --

4 Q You testified at your deposition that you thought it was a  
5 good idea to get together to blow off some steam, correct?

6 MS. SHIKUNOV: Your Honor, I would just ask that the  
7 witness be permitted to finish her answer before we move to the  
8 next question.

9 BY MS. DIBIANCA:

10 Q Ms. O'Brien, will you finish your answer?

11 A Can you repeat the question, please?

12 Q Sure, I'm not sure which question Ms. Shikunov is  
13 objecting to that I didn't let you finish, so I'll repeat both.  
14 You went out from time to time with your coworkers for drinks  
15 because you thought it was a good idea to get together with  
16 those with whom you work so you could blow off some steam,  
17 correct?

18 A Correct.

19 Q Okay, for example, in May 2018, you tried to arrange a  
20 work outing to a Phillies game as a sort of extracurricular  
21 activity, correct?

22 A I don't recall that, but if you say that --

23 Q Let's look at DX109, please. Does this document help you  
24 refresh your recollection?

25 A Not really, but --

O'BRIEN-116

1 Q Okay, do you recall that Ms. McNulty and Ms. Barbounis,  
2 they didn't want to hang out with you so much at about May  
3 2018?

4 A No, I don't.

5 Q Okay, in July of 2019, you went on an overnight weekend  
6 trip with some MEF employees to Atlantic City, correct?

7 A I'm sorry, when was that?

8 Q In July of 2019 --

9 A Okay.

10 Q -- you went on a trip, on an overnight trip on the weekend  
11 with some of your coworkers to Atlantic City, correct?

12 A Yes.

13 Q And I believe you testified last week that your boyfriend,  
14 Matthew Ebert, had a comped room at a casino?

15 A Yes.

16 Q Okay, and Ms. McNulty was on that trip, correct?

17 A Correct.

18 Q Ms. Barbounis went too, correct?

19 A Correct.

20 Q And your boyfriend, Matthew Ebert, he also was there,  
21 correct?

22 A He was not there. He was there briefly. He had to check  
23 in because the room was in his name. I'm sorry. He had check  
24 in because the room was in his name, so he went down and  
25 checked in, and then he left.

O'BRIEN-117

1 Q Well, I believe you testified last week that you sent him  
2 to the liquor store with Katrina Brady, right?

3 A No, that is not what I testified to.

4 Q Who went to the liquor store?

5 A When we checked in, he checked us in, and we had said we  
6 wanted to go to the liquor store and grab some drinks, so he  
7 drove Katrina and I to the liquor store and then he dropped us  
8 off.

9 Q Okay.

10 A The liquor store was like maybe two minutes away.

11 Q That trip, the purpose of that trip was to celebrate Ms.  
12 McNulty getting a new job, correct?

13 A Correct.

14 Q She had gotten a new job in New York City, correct?

15 A Actually, she had gotten a job offer. It wasn't finalized  
16 at that point.

17 Q Okay, she wanted to move to New York to be with her  
18 boyfriend, right?

19 A Yes.

20 Q So, is it fair to say that you were a lucky enough  
21 individual to have good friends at work who you could hang out  
22 with after work too?

23 A I wouldn't say that they were friends. We were friendly.  
24 At that point, we had been through everything. We had been  
25 through a lot and Tricia was getting out, so we were

O'BRIEN-118

1 celebrating that.

2 Q Yes, this is July 2019, the same month when you filed your  
3 first charge of discrimination against my clients, correct?

4 A That is when it became official, yes. The wheels were in  
5 motion prior to that.

6 Q When were the wheels in motion, Ms. O'Brien?

7 MS. SHIKUNOV: I'm going to object to that insofar as  
8 asking about communications with counsel's office.

9 THE COURT: Rephrase the question.

10 BY MS. DIBIANCA:

11 Q When did you initiate the charge process, Ms. O'Brien?

12 A The day Dr. Pipes forced me to turn my work product over  
13 to Gregg Roman.

14 Q The day when Mr. Pipes forced you to turn your work  
15 product over to Mr. Roman, and that was with relationship to  
16 the audit, correct?

17 A Correct.

18 Q And that was in June 2019, correct?

19 A Correct.

20 Q And that's when you began to initiate the process that has  
21 led us to this courtroom today, correct?

22 A Correct.

23 Q You testified on Friday that you and Mr. Roman were  
24 friends, didn't you?

25 A Did I say friends, that we were friends, friendly, that he

O'BRIEN-119

1 pushed a friendship, that he promoted a friendship and that I -  
2 - I wanted a friendship, especially when I first started.

3 Q So, my question -- I'm going to ask the witness to answer  
4 the question. You testified on Friday twice, didn't you, that  
5 you and Mr. Roman were friends?

6 A I guess I thought we were.

7 Q Okay, you and Mr. Roman talked about your families, didn't  
8 you?

9 A When he pushed the conversation that way.

10 Q Okay, you shared with him information about your family,  
11 Ms. O'Brien?

12 A I think with coworkers, you work with people all day, you  
13 definitely do share some stuff. You find some stuff out.

14 Q I'm not talking about your coworkers, Ms. O'Brien. I'm  
15 talking about Mr. Roman, who you testified was your direct  
16 supervisor.

17 A Correct.

18 Q Did you share information with Mr. Roman about your  
19 family?

20 A I've shared information with my previous boss about my  
21 family as well.

22 MS. DIBIANCA: Your Honor, I'm going to ask you to  
23 direct the witness to answer the question.

24 THE COURT: Ask her one more time, please.

25 BY MS. DIBIANCA:

O'BRIEN-120

1 Q Ms. O'Brien, did you share information with --

2 A Yes.

3 Q Ms. O'Brien, did you share information with Mr. Roman  
4 about your family?

5 A Yes.

6 Q Personal information about your children, correct?

7 A I don't know how personal or how much detail, but probably  
8 some.

9 Q Well, you talked to him about your son's health issues,  
10 correct?

11 A Probably at an overview level, probably not too detailed,  
12 but, yes, I had to be out of work one day, so.

13 Q That was the only context in which you spoke to Mister --

14 A Oh, I don't know. I mean, no, probably not, but --

15 Q You went out for drinks with Mr. Roman from time to time,  
16 correct?

17 A I remember one time.

18 Q And when was that?

19 A I'm not sure. I think it was in 2017.

20 Q And do you know where you went for drinks in 2017 with Mr.  
21 Roman?

22 A To Misconduct.

23 Q Okay, no other times?

24 A I don't recall. I mean, out after work?

25 Q Yes, ma'am.



O'BRIEN-121

1 A I don't recall. I recall that one because I was  
2 traumatized. You'd have to show me and maybe I would remember.

3 Q Just to be clear about your testimony, you just said that  
4 you were traumatized --

5 A Yes.

6 Q -- by going out for drinks with Mr. Roman in September of  
7 2017 to Misconduct, is that --

8 A It --

9 Q -- your testimony?

10 A It was --

11 Q I need to finish the question, please.

12 A Okay.

13 Q Is that your testimony?

14 A Yes.

15 Q Okay.

16 A I was uncomfortable.

17 Q You remember it distinctly, is that correct?

18 A What I will tell you is that I don't know the dates  
19 specifically. I might have my dates wrong. I'm not sure, but  
20 when I went out to dinner, for drinks with Mr. Roman for our  
21 quarterly management meeting, I was made incredible  
22 uncomfortable. I'm not sure of the date.

23 Q And it traumatized you, so you have a clear recollection  
24 in your head, correct?

25 A I have a clear recollection in my head of that evening.

O'BRIEN-122

1 Q Okay, for example, you also went out with Mr. Roman in  
2 mid-July 2018 for drinks, didn't you?

3 A Well, that might be the time that I was traumatized,  
4 actually. I'm not sure. Ms. Dibianca, I don't have a timeline  
5 in front of me and you're saying I went here and I went there.

6 This is like three years ago. I was -- I had a boss that I  
7 was trying to have a friendly relationship with.

8 Q I'm going to ask the witness to stay on the answer. So,  
9 did you go out with Mr. Roman for drinks in July of 2018?

10 A I believe I did, yeah.

11 Q Okay, and you believe you went out for drinks with him in  
12 September 2017, correct?

13 A I'm not sure.

14 Q Okay, which one was the alleged trauma?

15 A And now I'm not sure. I don't know. I don't ever  
16 remember going out two times with him. If you gave me  
17 something to look at or some frame of reference --

18 Q The harassment training, Ms. O'Brien, that you did on  
19 April 17, 2018, that was almost exactly one month after the  
20 alleged incident at AIPAC, right?

21 A It seems convenient.

22 Q I'm not sure what that means, Ms. O'Brien. This is a  
23 court of law, so if you'd like to answer my questions, I would  
24 appreciate it.

25 A Yes.

O'BRIEN-123

1 Q Was it one month?

2 A Yes.

3 Q Okay, so at that time, that incident was fresh in your  
4 mind, correct?

5 A It wasn't in the office. It was after hours and I thought  
6 he had made an incredibly poor choice, and I was trying to have  
7 a good relationship with my boss and all of my coworkers, so I  
8 tried to have a good relationship with him, maintain --

9 Q You were trying to have a relationship --

10 A -- a friendly workplace.

11 Q Please, finish.

12 A I wanted to maintain a friendly workplace, good  
13 relationships with my coworkers and my boss.

14 Q So, you -- I'm not sure how that pertains to whether or  
15 not you would have addressed an incident at harassment training  
16 after having allegedly witnessed what you contend to be an  
17 incident of harassment. How does that relate to you --

18 A It happened --

19 Q -- being friends with your coworkers, Ms. O'Brien?

20 A It happened so quickly and no one ever complained to me  
21 about it, and I was afraid to ruffle feathers.

22 Q How does that relate to you being friends with your  
23 coworkers?

24 A I was afraid to ruffle feathers, so I was keeping a good  
25 relationship, trying to keep a good relationship with my

1 coworkers and my boss.

2 Q So, at the harassment training in April 2018, you wanted  
3 to maintain your friendships with your coworkers, so you did  
4 not bring up what you, the human resources professional, now  
5 contend was an incident of harassment?

6 A As I said, I wanted to keep a friendly atmosphere and I  
7 was trying to do my part to have a friendly relationship with  
8 everyone, but I was also afraid, Ms. Dibianca, to report  
9 anything. I certainly wasn't going to go out on a limb and  
10 report something against somebody who wasn't complaining to me.

11 Q Well, does the policy at the Middle East Forum say  
12 anything about only if you received a complaint? It doesn't,  
13 does it?

14 A The policy says that I would have to report it to Gregg  
15 Roman or Daniel Pipes and I was afraid to do that, and rightly  
16 so.

17 Q Okay, you did report it to Daniel Pipes, not the AIPAC,  
18 but you did make a report of harassment on behalf of Lisa  
19 Barbounis to Dr. Daniel Pipes at some point, correct?

20 A I did.

21 Q Okay, on August 10 -- so we talked about you said in  
22 September 2017, you were allegedly traumatized at the sports  
23 bar during your drinks and conversation with Mr. Roman, then  
24 you can't recall whether you went out with him in mid-July 2018  
25 for drinks. How about on August 10, 2018, do you recall that

O'BRIEN-125

1 you told Mr. Roman that you were headed home or you would tell  
2 him to come out for a drink?

3 A I don't recall that.

4 MS. DIBIANCA: Okay, let's pull up DX99, please, and  
5 maybe that will refresh your recollection. It's at -- yeah,  
6 that first page there. No, I'm sorry, Rich, that's not it, so  
7 we can go to the next one. Oh, the bottom, I'm sorry, bottom  
8 of the page, last one. I'm heading home, yeah, there we go.

9 THE COURT: Attorney Dibianca, can you let us know  
10 who are the parties in this exchange?

11 MS. DIBIANCA: Yes, certainly.

12 BY MS. DIBIANCA:

13 Q So, this is a text message string between you and Mr.  
14 Roman, Ms. O'Brien. Does it look familiar?

15 A No, but --

16 Q Okay, take your time and familiarize yourself with it if  
17 you would like.

18 A I'm fine. If you say that it's between us, I believe you.

19 Q Okay, so you see the date there is October 10, 2018, and  
20 you say I'm heading home or I would tell you to come out for a  
21 drink?

22 A Do you have one of those where I ask him out for a drink?

23 Q My question is this one.

24 A I see that.

25 Q Okay, do you remember saying that to Mr. Roman?

O'BRIEN-126

1 A Do I remember handing him an empty invitation? No.

2 Q I don't know anything about an empty invitation.

3 A I don't recall saying it, but it doesn't sound like it was  
4 likely that we were getting a drink.

5 Q Does it sound like something you would not have said?

6 A It sounds like me trying to be friendly with my boss.

7 Q Okay, that will do. On September 19, 2018, you told Mr.  
8 Roman that you wanted to have, and I'm going to quote, a  
9 follow-up with Lisa, but you didn't want to discuss it at the  
10 office so she couldn't listen in. Does that sound familiar?

11 A I said what?

12 MS. DIBIANCA: Let's pull up DX100. Technical  
13 difficulties? No problem.

14 PARTICIPANT: It's going to be a second.

15 MS. DIBIANCA: It's okay. We'll come back.

16 BY MS. DIBIANCA:

17 Q In September 2018, do you remember discussing Ms.  
18 Barbounis with Mr. Roman?

19 A I mean, Ms. Barbounis was a topic of discussion quite  
20 often. I don't --

21 Q Okay, do you remember saying to Mr. Roman that you and he  
22 could just get some beer and order sandwiches so you could talk  
23 without distraction?

24 A No, I don't remember.

25 Q You don't remember that. We'll pull that exhibit up in

O'BRIEN-127

1 just a minute. You testified last week that Mr. Roman looked  
2 to you for guidance because of your experience, didn't you?

3 A He told me when he hired me at first that he wanted to use  
4 me as, I guess, a consult.

5 Q Okay, because of your experience?

6 A Correct.

7 Q How old were you compared to how old was he at that time,  
8 do you know?

9 A I don't know how old he is now, so I don't know.

10 Q Okay, how old are you now?

11 A 51.

12 Q Okay, so would you disagree if I said you're approximately  
13 15 years older than Mr. Roman?

14 A If you say so.

15 Q Okay, I'd like to talk about the conduct that you allege  
16 occurred during your employment at the Middle East Forum and  
17 that you now claim was harassment. Ms. O'Brien, you allege  
18 that early on in your employment with the Forum, Mr. Roman made  
19 the statement that he, quote, liked older women. You allege  
20 that, correct?

21 A That's correct.

22 Q Okay, when did he say that, Ms. O'Brien?

23 A I don't remember. It was early on.

24 Q Early on before Misconduct or after Misconduct --

25 A Before.

1 Q -- Sports Bar?

2 A Before.

3 Q Before that.

4 A I thought he had a crush on me.

5 Q You don't know whether there were others present when he  
6 made that statement, do you?

7 A I don't recall.

8 Q You don't know whether -- you don't know the context of  
9 that statement, do you?

10 A The context of the statement was he said to me I like  
11 older women.

12 Q And what did you say to him, Ms. O'Brien?

13 A I don't recall.

14 Q Anything?

15 A No.

16 Q Okay, did you talk to him the next day and say you know,  
17 Mr. Roman, I don't know that that's such an appropriate thing  
18 to say from an HR perspective?

19 A That sounds like something I would do. I do -- I  
20 certainly was offering him guidance at that point --

21 Q But --

22 A -- because he had told me that he wanted it.

23 Q And did you actually say that to him?

24 A I may have. I don't know.

25 Q But you don't recall?



1 A I don't recall.

2 Q You didn't object at the time of the alleged comment, did  
3 you, Ms. O'Brien?

4 A Did I object? I probably -- did I object or didn't I?  
5 You just told me I did.

6 Q I didn't tell you anything. I'm just --

7 A Oh.

8 Q -- asking questions.

9 A You're confusing me because you -- okay, so could you  
10 repeat the question, please?

11 Q At the time that Mr. Roman allegedly said to you that he  
12 liked older women, you don't remember the date of that,  
13 correct?

14 A I do not.

15 Q Okay, and you don't remember whether others were present,  
16 correct?

17 A I don't. It sticks in my head. I remember it.

18 Q You did not object to the comment at the time that he made  
19 it, correct?

20 A Most likely I blew it off and tried to change the subject.

21 Q Okay, and you did not object to the comment after that,  
22 correct?

23 A I don't recall.

24 Q You didn't offer Mr. Roman any guidance or counseling  
25 about things that he should or should not maybe say?

O'BRIEN-130

1 A I thought you said I did do that.

2 Q Ma'am, I'm not saying you did anything. I'm asking you  
3 questions.

4 (Laughter.)

5 A I said I don't recall.

6 Q You weren't offended by the comment at the time, were you,  
7 Ms. O'Brien?

8 A I was made uncomfortable by the comment, sure, I was.

9 MS. DIBIANCA: Yeah, we're ready for -- Mr. Hobbs has  
10 successfully located the exhibit that I wanted to point you to.

11 This is the page, DX, for counsel's purposes, DX100, and I'm  
12 looking for the September 19, 2018, yeah.

13 THE COURT: And who were the participants here,  
14 please?

15 MS. DIBIANCA: This is -- yes, thank you, Your Honor.

16 BY MS. DIBIANCA:

17 Q This is the same -- this is text messages between you and  
18 Mr. Roman, Ms. O'Brien?

19 A Who is who?

20 Q You are on the left. He is on the right. So, you are in  
21 the texts on the left. His responses to you are in the shaded  
22 right-hand column. Does this help refresh your recollection  
23 about whether or not you were talking with Mr. Roman in  
24 September of 2018 about Ms. Barbounis?

25 MS. SHIKUNOV: Your Honor, before she answers that

O'BRIEN-131

1 question, I would just ask that she be permitted to read the  
2 entire string because we just zoomed it out right away, which I  
3 appreciate because it's tiny and that's why we're doing that,  
4 but --

5 THE COURT: Okay, we'll allow it. Mr. Hobbs,  
6 (inaudible) maybe the bottom of that page just so it's easier  
7 to read?

8 MR. HOBBS: Good, Your Honor?

9 THE COURT: I think that will work. Let's see. Can  
10 you read that, Ms. O'Brien?

11 THE WITNESS: Yes.

12 MS. DIBIANCA: Can you go to the second page of  
13 DX100, please, at the top?

14 BY MS. DIBIANCA:

15 Q You see there, don't you, Ms. O'Brien, where you suggest  
16 to Mr. Roman maybe we could just get some beer and order  
17 sandwiches so we can talk without distraction, correct?

18 A Can we go back to the first part?

19 MS. DIBIANCA: We sure can.

20 THE COURT: Let's let Attorney Dibianca ask her  
21 questions.

22 BY MS. DIBIANCA:

23 Q Do you remember saying to Mister -- does help you refresh  
24 your recollection whether you suggested to Mr. Roman that you  
25 should, the two of you should go get beer and sandwiches so you

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1 could talk without distraction?

2 A It wasn't the two of us. I said -- can you -- I had said,  
3 from what I just read there, I said I wanted to talk about  
4 Lisa. He said drinks, and then I said maybe Matt should go  
5 too.

6 Q Okay.

7 A So, that's a little bit different than me inviting Mr.  
8 Roman out for drinks.

9 Q Okay, so it was -- did you go out for drinks with Mr.  
10 Roman --

11 A I don't recall.

12 Q Did you go out for drinks with Mr. Roman and Mr. Bennett?

13 A I don't recall.

14 Q You don't recall ever going out for drinks with them?

15 A Yeah, we did maybe once. It was like you said, coworkers.  
16 We all went out, so it was different people at different  
17 times. I may have gone out with Matt and Gregg at one time.

18 Q So, you did go out for drinks with Mr. Roman. Your  
19 testimony is just that there may have been other people there?

20 A Yes.

21 MS. DIBIANCA: Okay, I think that's a good place to  
22 take a break, it's 12:30, for lunch if that works for the  
23 court.

24 THE COURT: Okay, yeah, we can do that.

25 MS. DIBIANCA: Okay.

O'BRIEN-133

1           THE COURT: Thank you very much. Ladies and  
2 gentlemen, let me just remind you as we do, we're about to take  
3 a lunch recess, and consistent with the instruction that we've  
4 been discussing these last days, during this recess and as with  
5 any other recess, you must not discuss the case with anyone,  
6 including your fellow jurors, members of your family, people  
7 involved in the trial, or anyone else.

8           If anyone tries to talk to you about the case, do not  
9 tell your fellow jurors, but let me know about it right away.  
10 Do not read, watch, or listen to any news reports if there are  
11 any about the trial, and do not conduct any research on your  
12 own.

13           Remember, it is important and it is critical that you  
14 keep an open mind until all of the evidence has been received  
15 and you've heard the views of your fellow jurors. And with  
16 that, folks, we'll see you in an hour and enjoy your lunch.

17           THE CLERK: All rise.

18           (JURY EXITS COURTROOM.)

19           THE COURT: Okay, folks, we're going to take an hour.  
20 I would ask the witness to listen carefully to the questions  
21 from Attorney Dibianca on cross exam. Do your best to answer  
22 directly what her questions are. If there's other information  
23 that you think that the question isn't allowing you to share in  
24 your testimony, your counsel are very experienced and they'll  
25 get an opportunity in redirect to, I would presume, make sure

1     you're fully heard, okay?

2                 All right, folks, that's what we have. Thank you  
3     very much.

4                 THE CLERK: All rise. Court is in recess for one  
5     hour.

6                 (Whereupon, the above-entitled matter went off the  
7     record at 12:33 p.m. and resumed at 1:32 p.m.)

8                 THE COURT: Welcome back, please be seated, witness  
9     is still on the stand. Ready, Ms. Dibianca?

10                MS. DIBIANCA: Yes, Your Honor.

11     BY MS. DIBIANCA:

12     Q     Ms. O'Brien, we got off to a rocky start so I'm going to  
13     try to see if I can do a better job in getting us through the  
14     questions.

15                The AIPAC conference in Washington D.C., do you recall  
16     that was on March 4, 2018, correct?

17     A     Yes.

18     Q     Mr. Roman told you that you did not need to go to AIPAC,  
19     correct?

20     A     I don't remember that.

21                MS. DIBIANCA: If you could pull up DX 130 for me,  
22     please?

23                At the bottom of the page, and again, this is one of  
24     the text message strings between you and Mr. Roman, on February  
25     21, 2018 you say, did you need me for AIPAC? I need to know so

1 I can get coverage for my daughter and dog.

2 And then we'll go to the next page of the exhibit at  
3 the top and his response there is no.

4 BY MS. DIBIANCA:

5 Q Does that help refresh your recollection?

6 A Is there more to it? I said, okay, good, so I don't know.  
7 There's a lot of stuff that isn't there. There's a lot of  
8 text missing up at the top.

9 Q Okay, I'm asking you about the text where you ask Mr.  
10 Roman whether he needs you for AIPAC, do you see that?

11 A Yes, and he said, no, and I said, okay, good.

12 Q Let's see what you said right below no. You said, okay,  
13 good, lol. So, you weren't needed for AIPAC, correct?

14 A I guess no.

15 Q But you did go to AIPAC, correct?

16 A Something must have changed.

17 Q me ask you this, you had a hotel room, correct?

18 A At AIPAC?

19 Q Yes.

20 A Yes.

21 Q You were not intending to stay at the Airbnb that was  
22 rented by the Forum, correct?

23 A Correct.

24 Q And that Airbnb was also used as the meeting place for the  
25 Forum business during the conference, correct?

1 A Correct.

2 Q After the conference on March 4th, you, Mr. Roman, and  
3 other MEF employees, grantees, and fellows went to various  
4 social functions, correct?

5 A Correct.

6 Q So did Ms. Barbonous and Ms. McNulty?

7 A Did they what?

8 Q They attended those social events with you?

9 A Yes.

10 Q And you were drinking at those functions, correct?

11 A Everyone was, yes.

12 Q After the social functions were over, Mr. Roman had the  
13 MEF folks return to the Airbnb for a debrief, do you recall  
14 that?

15 A I don't recall it being a debrief, I recall him inviting a  
16 couple fellows and some grantees back.

17 Q Would you agree that there were about 15 to 20 people at  
18 the Airbnb that night?

19 A I don't know if it was that many but --

20 Q Do you remember there was pizza there?

21 A Yes.

22 Q By the time you got to the MEF after-party you were drunk,  
23 weren't you?

24 A I don't know how drunk I was but I had been drinking, yes.

25 Q I believe you testified at your deposition that you were



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1   intoxicated at the least, do you recall testifying to that?

2   A     I said buzzed.

3   Q     Were you intoxicated at the Airbnb?

4   A     I had been drinking, yes. Can you define intoxicated?

5   Q     If we could pull up the witness's deposition transcript,  
6   Page 87 please, and we'll see what her words were? Does this  
7   help refresh your recollection?

8   A     Yes, it sounds exactly like what we just said here.

9   Q     So, you decided to stay the night at the Airbnb even  
10  though you had a hotel room waiting for you, correct?

11  A     I don't feel like I decided that.

12  Q     Did you stay at the Airbnb that night?

13  A     Yes.

14  Q     Did anybody force you to stay at the Airbnb that night?

15  A     Greg is a very alpha personality and he said you guys  
16  don't need to go back there, just stay here, and we all did  
17  that.

18  Q     So, did anyone force you to stay at the Airbnb?

19  A     No.

20  Q     The other women, Ms. Barbonous and Ms. McNulty, also were  
21  intoxicated, correct?

22  A     I can't speak for them. They had been drinking as well.

23  Q     But you don't recall whether they were intoxicated?

24  A     I didn't give them a breathalyzer. We were all drinking  
25  and buzzed I would say.

1 Q Didn't Mr. Roman offer to get you and the other women an  
2 Uber back to your hotel?

3 A I don't recall that.

4 Q And there were no incidents overnight there, were there?

5 A There were not.

6 Q Wasn't Mr. Roman the first in the group to go to bed that  
7 evening?

8 A I don't know what he did. He did leave the room.

9 Q For the rest of the evening, correct?

10 A I never saw him again.

11 Q You left early the next morning, correct?

12 A Correct.

13 Q With the other women?

14 A Correct.

15 Q And that same morning, the next morning, March 5th, you  
16 texted Mr. Roman and said that you were, quote, hungover as  
17 shit, didn't you?

18 A I don't know, if you say I did. I'm assuming you saw it.

19 Q We'll do DX 130, the next page. Mr. Roman says to you in  
20 the morning of the 5th, everybody okay, and your response, Ms.  
21 O'Brien, was what?

22 A Hungover as shit but okay. But everybody, not just me.

23 Q Was everybody okay?

24 A We were hungover, I guess.

25 Q But everyone was okay, correct?

1 A Yes, we were.

2 Q You testified last week on Friday that you saw Mr. Roman  
3 sitting on the couch with Ms. Barbonous and Ms. McNulty,  
4 correct?

5 A I did, yes.

6 Q And how long did that last, him sitting between the two  
7 women?

8 A It wasn't that long. I'm sorry, I don't know exactly, it  
9 was a crowded room, as you said, but it wasn't that long. They  
10 both got out pretty quickly.

11 Q And I believe your testimony last week was that you  
12 observed Mr. Roman, and I'm going to use your word and your  
13 Counsel's words, scoop Ms. McNulty onto his lap?

14 A Correct.

15 Q I don't believe that's in your charge of discrimination,  
16 is it?

17 A That was filed with the Court?

18 Q With the EEOC.

19 A No.

20 Q You didn't mention anything in your charge about the AIPAC  
21 conference, did you?

22 A I was concentrating more on myself and the things that  
23 happened directly to me.

24 Q You testified last week that Ms. McNulty -- I believe your  
25 word was looked mortified at the time?

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1 A She did, she's very prim and proper.

2 Q You didn't step in to do anything about that, did you?

3

4 A I did not.

5 Q You didn't report it when you got back from the conference  
6 to Dr. Pipes, did you?

7 A I did not.

8 Q You didn't speak to Mr. Roman about it at that time when  
9 you got back from the conference, did you?

10 A I did not.

11 Q And no time thereafter, correct?

12 A No.

13 Q I believe you testified last week that Ms. McNulty simply  
14 moved over and the night went on, correct?

15 A Moved on from that, yes.

16 Q You didn't talk to Ms. McNulty about the incident either,  
17 correct?

18 A I did not.

19 Q You as the HR person, Ms. O'Brien, did nothing about any  
20 alleged concerns you had that evening about what you claim that  
21 you saw, is that correct?

22 A Correct.

23 Q I'm going to talk about the incident that you claim you  
24 heard about in Israel but first I wanted to play a recording  
25 for you.

1           The recording that I'm going to play is an agreed  
2 upon excerpt that the parties have stipulated to.

3           It's not the complete recording, it's just excerpts  
4 and I believe you've heard it before, it's a recording of a  
5 phone call between you and Ms. Barbonous.

6           Are you familiar with that recording?

7   A     Yes.

8   Q     And can you tell us when the recording was made?

9   A     Date-wise, I can't give you a specific date. It was after  
10 Greg had been removed from the office.

11   Q     And who recorded the call?

12   A     Ms. Barbonous did.

13   Q     And she recorded it without your knowledge, correct?

14   A     That's correct.

15   Q     You can go ahead and play it, DX 118, just so you got it  
16 for your records. And there's two segments to it, we're going  
17 to listen to the first one and I'm going to ask you to confirm  
18 who's speaking and then we'll go ahead and listen to the second  
19 one.

20           (Audio played.)

21           And who's speaking in that first portion?

22   A     That's me.

23   Q     Go ahead, please.

24           (Audio played.)

25           Do you remember the context of your comments there, Ms.

1 O'Brien?

2 A I do.

3 Q Why were you yelling? Would you agree with me that you  
4 were yelling at Ms. Barbonous?

5 A She called me up and was screaming at me so, yes, I was  
6 yelling back.

7 Q And what was the context of the comments?

8 A When Greg was removed from the office, some of his  
9 responsibilities were moved over to everybody else.

10 So, Daniel had called Tricia McNulty in and she had  
11 gotten some additional responsibilities and I think this is  
12 actually after Matt Bennett left.

13 Because he was in charge of development as well, so  
14 she received those responsibilities and he gave her money for  
15 it. And I do payroll so he told me that, that's how I knew it,  
16 and then he had asked me to pick up and be the point person for  
17 the office.

18 I had already had my benefits taken away from me so  
19 now I had to pay for them myself, so that was a huge chunk.  
20 And so I wanted the extra responsibilities because I thought he  
21 would pay me like he was Tricia, and he said that he didn't  
22 think that was worth it.

23 And I said, then I think you should get somebody else  
24 to do it because I'm not going to take on the extra  
25 responsibility and not get paid for it. And he said, all

1 right, let me think about it.

2 The next time I heard anything about it he had called  
3 a meeting and he had said, we're going to have a vote to see  
4 who you all want to be your point person in charge of the  
5 office. And everybody was more content-based, the only  
6 ones that were really involved in the office management were  
7 Thelma Prosser and I, and Thelma was part time and Thelma  
8 definitely didn't want more.

9 So, I just assumed that I would win because why would  
10 you make something who didn't have anything to do with the  
11 office a point person? I was hoping to win because then I knew  
12 that he already knew that I would want money for it.

13 So, then I thought, okay, well, this is good, they'll  
14 vote for me and I'll get paid. And when the vote came back, he  
15 called to tell me that Lisa won the vote.

16 And I was confused as to why she would be the office  
17 point person, especially because she wanted nothing to do with  
18 the office. And he told me she was campaigning behind the  
19 scenes, he said, so I was mad.

20 Q You were mad at Ms. Barbonous, correct?

21 A Yes. Well, I was mad at everyone, really, but I really  
22 felt dejected because I felt after we had had so much turmoil  
23 in the office, I was always trying to really promote everybody,  
24 like, wow, she did this, that was amazing, she's so good at  
25 this.

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1           People are picking up and really trying to show you  
2   what they can do and I thought this would be an opportunity for  
3   me to do that and it was taken away from me and I was angry  
4   about it.

5   Q     So, it's fair to say you were cussing at Ms. Barbonous in  
6   an elevated voice, is that fair to say?

7   A     Yes.

8   Q     And you were the human resources person at that time,  
9   right?

10   A     Yes.

11   Q     And sitting here now, do you think that was appropriate  
12   behavior for a human resources person?

13   A     In a huge cooperation, certainly not. Should I have done  
14   it? No. We were a small team of about eight people, ten tops  
15   -- still no but it was a more relaxed office.

16   Q     That was a more relaxed office?

17   A     Well, I don't know what you mean. It should have been, I  
18   meant the relationships between the people were more lax.

19           (Audio played.)

20   Q     Did you hear Ms. Barbonous say in that conversation that  
21   DP, David Paul, wrote me an email.

22   A     It's actually Daniel Pipes.

23   Q     That's what I was going to ask you, to explain to the jury  
24   that DP means Daniel Pipes, Dr. Pipes?

25   A     Yes.



1 Q And you heard her say since Greg left, and is that  
2 consistent with your testimony that the recording occurred  
3 after Mr. Roman had been sent out of the office, some of his  
4 responsibilities removed?

5 A Yes.

6 Q Let's go to the Israel trip. The week after AIPAC --

7 A I'm sorry, it was after both Greg and Matt left that that  
8 recording was made.

9 Q The week after the AIPAC conference, so AIPAC was March  
10 4th, you returned to work, Mr. Roman offered you the  
11 opportunity to travel to Israel, correct?

12 A Correct.

13 Q You declined to take that trip, correct?

14 A I did.

15 Q You are aware that Mr. Roman, before he had asked you, he  
16 asked Mr. Bennett to attend the trip, correct?

17 A I never heard that until this moment.

18 Q And you told Mr. Roman that you wanted a hotel room  
19 instead of the Airbnb, correct?

20 A Yes.

21 Q And he said no due to the additional costs, correct?

22 A He said that he had already gotten an Airbnb and that's  
23 where he was staying.

24 Q So, the Airbnb had already been booked by the time he  
25 asked you if you wanted attend?

1 A Yes.

2 Q When you declined, Mr. Roman offered the seat to Lisa  
3 Barbonous, correct?

4 A When I declined, he said, okay, I'll ask Lisa to go and I  
5 said, okay.

6 Q She accepted, correct?

7 A She did.

8 Q She was very excited about the trip, wasn't she?

9 A Yes.

10 Q She sent pictures of the Airbnb to her mom, right? Were  
11 you aware of that?

12 A I don't know.

13 Q This was just one week after the alleged couch incident,  
14 right?

15 A I believe the trip to Israel was in April I thought?

16 Q The trip to Israel, do you think, was perhaps March 14,  
17 2018?

18 A If you say so.

19 Q So, if you were at AIPAC on the 4th of March and the trip  
20 was March 14th, would you agree that you were home for less  
21 than a week before Lisa was invited to attend the trip?

22 A I thought there was a bigger time in between.

23 Q So, would you agree with me that Ms. Barbonous did not  
24 seem concerned about staying in the Airbnb in Israel with Mr.  
25 Roman?

1 A I would agree.

2 Q Dr. Pipes did not know about the trip to Israel, correct?

3 A He did not.

4 Q Mr. Roman instructed the staff to not tell Dr. Pipes,  
5 correct?

6 A He did.

7 Q And you knew that you had been asked by Mr. Roman to hide  
8 it from Dr. Pipes, right?

9 A Yes.

10 Q And you did in fact hide it?

11 A I didn't hide it, I didn't tell him. I think he hid it.

12 Q You did not tell Dr. Pipes?

13 A I did not.

14 Q And you were the HR professional at the time?

15 A Yes.

16 Q And you testified earlier an HR person is a position of  
17 trust within the organization, right?

18 A Yes.

19 Q So, do you think now Dr. Pipes would have expected you as  
20 the HR person to come tell him if there was something that was  
21 being hidden from him that could have been of interest and  
22 importance to him?

23 A I was afraid to tell him. Mr. Roman had made it very  
24 clear that --

25 Q I'm just going to interrupt because I'm asking you a

1 different question.

2 A I'm sorry, okay.

3 Q My question was do you think Dr. Pipes, as the President  
4 and Founder of the Middle East Forum would have been interested  
5 to know the information and would have been expecting you as  
6 the HR person to disclose it to him?

7 MS. SHIKUNOV: I'm going to object because this  
8 calls for speculation. She can't testify as to what Dr. Pipes  
9 would like to know.

10 THE COURT: Rephrase it, Counsel, please?

11 BY MS. DIBIANCA:

12 Q I can move on. I'd like to talk about the dinner at the  
13 sports bar, Misconduct. Do you remember at your deposition you  
14 had trouble nailing down the actual year of that dinner?

15 A Yes.

16 Q Have you settled on a date at this point?

17 A I really believe that it was in 2017.

18 Q You believe it was in 2017?

19 A Yes.

20 Q And your charge, you're aware that you allege it was  
21 September 2018, correct?

22 A I'm not good with dates, we could see that I'm not good  
23 with dates.

24 Q Do you know when you filed your first charge of  
25 discrimination, Ms. O'Brien?

1 A That was in June.

2 Q July 24, 2019. So, in July of 2019 you swore under  
3 penalty of perjury to the United States Equal Opportunity  
4 Commission that you had had a dinner at Misconduct with Mr.  
5 Roman in September of 2018?

6 Does that sound familiar?

7 A Yes, I have my dates wrong.

8 Q So, was it September of 2018 the dinner occurred?

9 A I'll have to look because now I'm so far removed from it  
10 that I don't remember the days and I don't remember the dates.  
11 But what I put in my charge is what it may have been must have  
12 been because I'm sure I checked at that time.

13 Q So, you're not able to recall today sitting here but you  
14 certainly are comfortable relying on your memory at the time  
15 you filed the charge, that would have been accurate, correct?

16 A I would assume. I don't know the date.

17 Q But you knew it at the time you filed the charge, right?

18 A I guess, I don't know what you want me to say.

19 Q You testified you were traumatized by the event so I'm  
20 trying to nail down the time that you are testifying that you  
21 believe you had a traumatic experience.

22 A It was a traumatic experience, this whole employment was a  
23 traumatic experience when I now look back.

24 Q The entire four years was a traumatic experience?

25 A It is to me now.

O'BRIEN-150

1 Q You claim when you were at the sports bar that Mr. Roman  
2 expressed that he was having some marital problems, right?

3 A He did.

4 Q And at that time he asked you about your divorce, right?

5 A He did, yes.

6 Q At no time during that evening did Mr. Roman ever  
7 proposition you, did he?

8 A Outwardly proposition? I'm asking you to clarify  
9 proposition. Outwardly go back to the office with me, he did  
10 not ever say that.

11 Q I don't know what the opposite of that would be but if I  
12 said inwardly propositioned you, would that -- I'm not sure  
13 what the opposite of that is.

14 A I felt propositioned, he kept asking me to go back to the  
15 office.

16 Q Let's look at her deposition testimony transcript at 80 to  
17 81.

18 So, at the top of 81, and you can use 80 to get you  
19 to 81 if you wish, my question here that I asked you during  
20 your deposition was, the end of that question is, did he  
21 proposition you? And you answered, he talked about, no,  
22 I don't remember saying there was a proposition. And you go on,  
23 and you can certainly read the rest of that, but does that help  
24 you refresh your recollection about whether or not Mr. Roman  
25 propositioned you?

O'BRIEN-151

1 A That's what I was trying to clarify by what you meant by  
2 proposition. He did keep trying to get me to go back to the  
3 office but he didn't say that it was to have sex.

4 Q And I believe you testified last week that he asked you to  
5 return to the office, there were three instances when he said  
6 that?

7 A Yes, to sign paperwork.

8 Q About a bank transfer?

9 A Yes.

10 Q At no point in the evening did Mr. Roman ever talk about  
11 sex, did he?

12 A He talked about needing a release.

13 Q I'd like to talk about that, Ms. O'Brien. That is not in  
14 your charge, is it?

15 A No.

16 Q It's not in your complaint either, is it?

17 A No.

18 Q It's not in your second charge of discrimination, is it?

19 A No.

20 Q And it's not in your second complaint, is it?

21 A No.

22 Q So, the first time I heard about this was at your  
23 deposition. When did you decide that Mr. Roman had said the  
24 comment about a release?

25 A There were a lot of comments that he made and I might not

1 remember or have included them at that point.

2 Q Did you ever tell Daniel Pipes that Mr. Roman had made a  
3 comment about a release?

4 A I was uncomfortable even telling Dr. Pipes anything  
5 sexually-related.

6 Q But there was no conversation about sex that night,  
7 correct?

8 A Just releases.

9 Q How many times do you contend that Mr. Roman said  
10 releases, the evening of Misconduct?

11 A He probably said it two maybe three but it was in trying  
12 to drive home a point, like, release, release, like that. And  
13 that was it.

14 Q And at no point in the evening at the sports bar did Mr.  
15 Roman ever touch you, correct?

16 A No, he didn't.

17 Q And at one point in the evening you introduced sex into  
18 the conversation, correct?

19 A I did?

20 Q That's what I'm asking.

21 A I don't recall that.

22 Q You said that you were not going to F him.

23 A Yes, I did because I felt so uncomfortable at that point.

24 Q So, you did introduce sex into the conversation?

25 A I introduced it as not going to happen.



O'BRIEN-153

1 Q Twice you said it to him that evening, correct?

2 A Maybe if I said it the same way he said release, twice,  
3 driving home a point.

4 Q Your testimony at deposition was that at one point in the  
5 evening you stopped, you looked at Mr. Roman and you said, you  
6 know I'm not going to -- and I'm not going to say the curse  
7 word in federal court -- F you, right?

8 And then you said that Mr. Roman responded by asking  
9 you, quote, why would you say that, do you remember that?

10 A Correct.

11 Q That is what he said, right?

12 A It is.

13 Q And you repeated to him in response, quote, you know I'm  
14 not going to F you, right?

15 A Correct.

16 Q And then he changed the topic, didn't he?

17 A One of us did.

18 Q Did you review your deposition prior to your testimony?

19 A I did. This is a lot.

20 Q So, you recall then that he said that you said at your  
21 deposition that after you said, you know I'm not going to F  
22 you, right, for the second time, he then changed the topic and  
23 the dinner went on without incident. Do you recall that?

24 A Correct.

25 Q Ms. O'Brien, isn't it normal for coworkers who are friends

O'BRIEN-154

1 to talk about their personal lives and perhaps even their  
2 marital problems when out at a sports bar in the evening?

3 A I guess if they're both at the same level of comfort. I  
4 felt uncomfortable talking about his marriage.

5 We were supposed to go there to talk about work and I  
6 started the conversation about work, and he said we're not  
7 going to talk about that, let's not talk about work tonight.

8 So, I went out for the pretense of a work meeting and  
9 then was suddenly at a personal meeting.

10 Q You often talked about your personal life with your  
11 coworkers, right?

12 A I don't know how often but I'm sure everybody -- like I  
13 said, it was a small group so everybody knew some of what was  
14 going on in others' lives.

15 Q You did not go back to the office that evening with Mr.  
16 Roman, correct?

17 A I did not.

18 Q I'd like to talk about Ms. Barbonous. Ms. Barbonous, as  
19 you know, will be here to testify on your behalf tomorrow or  
20 the next day, and we heard a snippet of your relationship with  
21 Ms. Barbonous.

22 Would you agree with me that you had a rocky  
23 relationship with Ms. Barbonous?

24 A Yes.

25 Q You testified I believe last week that Mr. Roman pitted

1 you and Ms. Barbonous against each other, is that correct?

2 A Yes.

3 Q So, is it correct to say that you blame Mr. Roman for your  
4 poor relationship with Ms. Barbonous?

5 A Yes.

6 Q And it wasn't Ms. Barbonous's alpha female personality,  
7 which were your words last week?

8 A I have many alpha female friends, you just respect each  
9 other. And by him pitting us against each other, there was no  
10 respect.

11 Q So, the tape we heard from March 2019, I believe it was  
12 March 2019, we'll say after Mr. Roman was out of the office, he  
13 was not pitting you against Ms. Barbonous, correct?

14 A Daniel Pipes was pitting us against each other when he  
15 told me that but we had already had a lot of mistrust at that  
16 point, there was a lot of damage done already.

17 Q So, when Mr. Roman was in the workplace, he pitted you and  
18 Ms. Barbonous against each other, right?

19 A Yes.

20 Q And then when he was not there anymore, he had been  
21 exiled, Dr. Pipes began to pit the two of you against each  
22 other, right?

23 A I don't think he did it repeatedly, he did it in that  
24 instance.

25 Q By telling you that he thought Ms. Barbonous had

1 campaigned for herself?

2 A Yes.

3 Q But that was the truth, wasn't it, she had campaigned for  
4 herself?

5 A She had said she didn't.

6 Q So, it was Dr. Pipes at that point who was causing the  
7 animosity? It had nothing to do, then, with the fact that you  
8 and Ms. Barbonous did not get along?

9 A We got along often, we would get along sometimes and not,  
10 we would argue but then we would always be able to work  
11 together.

12 Q Were you getting along on the tape we just heard? Was  
13 that you getting along?

14 A That was one of our fights.

15 Q That was you not getting along?

16 A Correct.

17 Q How much of the time percentage-wise always that you did  
18 actually get along during her tenure with Middle East Forum?

19 A I would say most. Towards the end when he was having me  
20 document her, that's when it started to really get bad. But we  
21 would go, we'd go, we'd get along, we wouldn't, we'd have our  
22 issues, we'd let it go and we'd get back to work.

23 Q During your deposition, do you recall we reviewed some  
24 text messages in which Ms. Barbonous used some particularly  
25 foul language about you with your coworkers?

1 A I'm sorry, when did we do that?

2 Q Ms. Barbonous sent text messages to Ms. McNulty and Ms.  
3 Brady calling you words that I really don't want to put on the  
4 screen, do you remember that?

5 A When was that?

6 Q Early March.

7 A Was that in the deposition that we looked at those, is  
8 that what you said?

9 Q Yes, do you recall them?

10 A Vaguely but yes.

11 Q You testified last week that you do not believe Ms.  
12 Barbonous had the qualifications for the job for which she was  
13 hired, correct?

14 A That was openly discussed during her interview.

15 Q My question was just last week you testified that you  
16 thought at the time she was hired, she did not have the  
17 qualifications, right?

18 A Yes.

19 Q And you were very open about that at the time she was  
20 being hired?

21 A During the interview, yes.

22 Q And I believe you testified last week that during Ms.  
23 Barbonous's actual interview, you told her that she would hate  
24 the job and she would either quit or get fired, right? Do you  
25 remember testifying to that?

O'BRIEN-158

1 A Yes.

2 Q You were the HR person and you told a job candidate during  
3 her interview that she'd hate the job or end up getting fired  
4 or quit?

5 A She wanted to be content-based and that's what she talked  
6 about during her interview.

7 Q I'm just asking the question of when did you say during  
8 your interview? I promise your Counsel will have the  
9 opportunity to follow up with this.

10 A I'm sorry.

11 Q So, did you tell a candidate that? As the HR person, you  
12 told a candidate that during a job interview?

13 A Yes.

14 Q And do you think that was appropriate for the HR person to  
15 tell a candidate that they were going to hate the job and would  
16 quit or get fired?

17 A In that instance there was a whole conversation about how  
18 she had no skill set for that job, she had never done it before  
19 so I feel it was practical thinking.

20 Normally, when you're hiring an executive assistant  
21 you hire someone with an executive assistant skill set and she  
22 didn't have it.

23 Q But she wasn't going to be just an executive assistant,  
24 was she, she was hired to go into a different position, wasn't  
25 she?

1 A And I suggested that when he was ready to hire for that  
2 position he'd call her back. Because he needed an executive  
3 assistant, he should hire an executive assistant. Q Ms.  
4 Barbonous was loud in the office, wasn't she?

5 A Yes.

6 Q And she was disruptive in the office, wasn't she?

7 A Yes.

8 Q You didn't like she was loud, correct?

9 A Correct.

10 Q And you complained that she was frequently disruptive,  
11 correct?

12 A Yes.

13 Q She was often late to work, correct?

14 A Yes.

15 Q And sometimes she left during the work day to get her hair  
16 and nails done, didn't she?

17 A Yes, but I think that was on her lunch break.

18 Q You testified in her deposition that Ms. Barbonous was,  
19 quote, the angry, aggressive, alpha-type personality, right?

20 A During my deposition I said that?

21 Q Yes. And that's still your testimony today, that Ms.  
22 Barbonous was the angry, aggressive, alpha-type personality?

23 A Yes.

24 Q You also testified during your deposition that she was  
25 high-strung, correct?

1 A Yes.

2 Q And you agree today that Ms. Barbonous is a high-strung  
3 individual?

4 A Yes.

5 Q You also testified during your deposition that Ms.  
6 Barbonous often flies off the handle, do you remember that?

7 A I agree with it.

8 Q Do you agree today that Ms. Barbonous often flies off the  
9 handle, correct?

10 A Yes.

11 Q Prior to her trip to Israel in March 2018, you had  
12 addressed her lateness with her, didn't you?

13 A I had what?

14 Q You had spoken to Ms. Barbonous to address the fact that  
15 she was often late to work, right?

16 A I don't recall.

17 Q We'll go back to it. And prior to the Israel trip you had  
18 called her out for being loud and disruptive in the office,  
19 right?

20 A I may have.

21 Q But you don't have any actual firsthand knowledge of  
22 whether or not Ms. Barbonous successfully performed her job  
23 duties, do you?

24 A I would ask Mr. Roman because he would discuss people's  
25 work ethic or just the status of their work, and I would ask



O'BRIEN-161

1 him if she was doing a good job. And he always said yes.

2 Q And you don't have any firsthand personal knowledge that  
3 was not correct, do you?

4 A I don't.

5 Q You alleged that following his return from Israel in March  
6 2018, Mr. Roman told you to document Ms. Barbonous' performance  
7 and attendance issues, correct?

8 A He did.

9 Q He said Ms. Barbonous was not doing her job and that's why  
10 he wanted you to document those issues, correct?

11 A Correct.

12 Q You were human resources at the time, right?

13 A Yes.

14 Q And you were already documenting her lateness and  
15 behavioral problems, correct?

16 A I wasn't, I think he wrote her up one time or something  
17 like that but I wasn't really documenting it. I wasn't keeping  
18 a log, which is what he had told me to do at that point.

19 Q So, as HR, it makes sense that you would be asked to  
20 document performance and attendance issues?

21 A Yes.

22 Q And you agree that there's nothing wrong with documenting  
23 those things when someone is not doing a good job, correct?

24 A Correct.

25 Q And in fact, as a human resources professional you know

O'BRIEN-162

1 that employers are supposed to document performance problems,  
2 correct?

3 A Yes, you have to give the person an opportunity to correct  
4 their behaviors.

5 Q Ms. Barbonous had her own issues, didn't she? Did she  
6 talk about her sex life in the workplace, Ms. O'Brien?

7 A Yes.

8 Q You never reported to that to anyone, that that was a  
9 problem, did you?

10 A No one ever complained about it.

11 I would jokingly, not jokingly but seriously  
12 jokingly, because everybody did have a friendly relationship, I  
13 would say, is anyone offended by Lisa? Let me know.

14 Q You said that?

15 A I did say that.

16 Q To whom did you say that?

17 A When she would make an inappropriate comment or whatever,  
18 I would say if anyone's offended you've got to let me know.

19 Q And that happened more than once, right?

20 A Yes.

21 Q While you were employed as HR with the Forum you were  
22 aware that Ms. Barbonous had sexual encounters with multiple  
23 different men connected to the Forum, correct?

24 A I did.

25 Q You did not report that to anyone at the Forum, correct?

O'BRIEN-163

1 A Correct.

2 Q I'd like to take a look at DX 96. It would be helpful if  
3 I pointed out which part, I'm looking at June 4, 2018. Down at  
4 the bottom there.

5 In this message, Ms. O'Brien, you ask Mr. Roman to  
6 please call you when he had a moment but to please not mention  
7 to anyone that you asked to speak with him.

8 Do you see that highlighted portion there?

9 A I do.

10 Q And I should have said this is again a text message  
11 between you and Mr. Roman. So, in June 2018 did you feel  
12 comfortable speaking to Mr. Roman in private?

13 A I have no idea. I would speak to him on the office or on  
14 the telephone.

15 Q But you were comfortable having communications you didn't  
16 want others to know about, correct?

17 A I don't have any idea what that's about.

18 Q You don't remember this?

19 A No, I don't remember it. I'm not saying I didn't say it  
20 but I don't know why I said it. He was my boss and he was the  
21 one that made the decisions about the office.

22 Q Let's go to the incident on October 30, 2018. There were  
23 times that you and Ms. Barbonous got into heated arguments in  
24 the workplace, correct?

25 A I don't know, I don't recall getting heated like that day.

1 Q What day?

2 A October 30th.

3 Q I'm just talking generally speaking. So, at any time  
4 during your time at the Forum did you and Ms. Barbonous  
5 exchange loud words?

6 A I don't recall a specific instance. Like I said, we didn't  
7 get along all the time but not like this.

8 Q And we're talking about this, we'll go ahead and get to  
9 it. So, the this that you're mentioning is the fight that you  
10 and Ms. Barbonous got into on October 30, 2018, right?

11 A Yes.

12 Q You have a recollection of the events on that date?

13 A I do.

14 Q A pretty clear recollection?

15 A Yes.

16 Q You went to the office that morning, correct?

17 A Correct.

18 Q At some time during the morning Ms. McNulty was there?

19 A Correct.

20 Q And Ms. Barbonous was there?

21 A Correct.

22 Q The two of them, Ms. Barbonous and Ms. McNulty, were  
23 meeting in an office with the door closed, is that your  
24 recollection?

25 A Correct.

1 Q You then texted Matthew Bennett. Let me ask you this,  
2 what was Matthew Bennett's role as compared to you? Was he  
3 management?

4 A No, he was a director of development.

5 Q He wasn't your direct report, he was more of a peer, is  
6 that fair?

7 A Yes.

8 Q And he wasn't your boss?

9 A No.

10 Q So, at some point in the morning you texted Mr. Bennett to  
11 see if he was coming in, right?

12 A I suppose.

13 Q And when he did get to the office, you told Mr. Bennett  
14 that Ms. Barbonous and Ms. McNulty had been meeting behind  
15 closed doors for the past 20 minutes, do you recall that?

16 A I don't recall that but I may have. They were behind  
17 closed doors and the thing about it was that usually, everybody  
18 had their doors open so it was weird when somebody shut the  
19 door.

20 Q It was weird so is that why you mentioned it to Mr.  
21 Bennett?

22 A I don't remember mentioning it to Mr. Bennett. I thought  
23 that I had told Greg when he called in or something, or maybe I  
24 mentioned it to Mr. Bennett, I don't know.

25 Q Do you recall that Mr. Bennett questioned Ms. McNulty

1 about the topic of her closed-door meeting?

2 A I remember Greg or Mr. Roman told me to go in there and  
3 find out what they were doing, and I said I wasn't comfortable  
4 doing that because I was not their boss.

5 Q Mr. Roman was not there that day, was he?

6 A Right, I guess we were texting or had a phone call, he  
7 would call in when he was not at the office.

8 Q But just so we're all clear, he wasn't in the office?

9 A It may be that he talked to Matt and Matt said Greg wants  
10 you to -- the instruction was for me to go in there and find  
11 out what they were talking about and I said, no, I'm not doing  
12 it.

13 And then Matt did, Mr. Bennett did.

14 Q Who did you tell you weren't going to do that? You said  
15 you weren't going to do it but I'm not sure if --

16 A I'm not sure if I spoke with Greg or if Mr. Bennett spoke  
17 with Greg, or if I did. But I know that they wanted me to go  
18 in and say, what are you guys talking about, and I said, no,  
19 I'm not doing it.

20 I thought I had spoken with Greg on the phone but I  
21 could be wrong.

22 Q So, if I told you that Mr. Bennett intends to testify that  
23 you texted him and told him there was a closed-door meeting and  
24 you were concerned about it, would that be inconsistent with  
25 what your testimony is right now?

O'BRIEN-167

1 A I don't think it's inconsistent because I wasn't sure how  
2 I told somebody, but that makes sense, yes. And then he must  
3 have said to me, Greg was to go in and found out what they're  
4 talking about, and I said no.

5 Q Why did you say no?

6 A Because them worked on projects together, I didn't have  
7 anything.

8 Even if they were working on something, I didn't know  
9 what it was, I didn't know what they were doing, I wasn't their  
10 boss, them made it very clear to me that I was not to tell them  
11 what to do because I wasn't their boss.

12 And he was telling me that I was management but they  
13 were not responding and I said you've never told them they have  
14 to listen to me so I'm not going to, I'm not doing it.

15 Q All that happened on October 30th?

16 A Yes.

17 Q You told them you weren't going to do it, for all those  
18 reasons you just said, on October 30th?

19 A Yes.

20 Q Mr. Bennett questioned Ms. McNulty about the topic of her  
21 meeting with Ms. Barbonous, right?

22 A He did and he said that Marnie told Greg that you guys  
23 were in their meeting?

24 Q And did that upset them?

25 A They were very angry.

O'BRIEN-168

1 Q Because they felt like you had been tattletaling on them?

2 A Correct.

3 Q As a result of Mr. Bennett approaching them about their  
4 closed-door meeting, which he pointed in your direction for,  
5 you and Ms. Barbonous got into a screaming match, right?

6 A Correct.

7 Q She screamed at you and you screamed at her, correct?

8 A Correct.

9 Q You backed her into her office?

10 A Correct.

11 Q You then yelled at Mr. Bennett?

12 A Correct.

13 Q And then you proceeded to storm out of the office?

14 A Correct.

15 Q Before you stormed out of the office you did yell at Ms.  
16 Bennett as well, right?

17 A Correct.

18 Q You texted Mr. Roman immediately after you walked out, do  
19 you remember that?

20 A No.

21 Q Would you agree with me that's the case?

22 A I may have, he was my boss and I just had a big fight in  
23 the office and we looked like we were crazy, so I probably  
24 wanted to let him know.

25 Q You wanted to let him know that you had just --



1 A I was angry.

2 Q And that you had just screamed at Ms. Barbonous and then  
3 Mr. Bennett in the workplace, right?

4 A Yes.

5 Q And you would agree with me that was not appropriate  
6 behavior for a human resources professional to engage in,  
7 correct?

8 A Correct.

9 Q So, you wanted make sure that Mr. Roman knew so that you  
10 didn't get in trouble, right? Let me ask it this way. You  
11 were worried that you were going to get in trouble, correct?

12 A I was more angry at that point because I was angry at him  
13 as well because I felt like he enabled discord in the office.

14 Q So, you were angry at Ms. Barbonous, you were angry at Mr.  
15 Bennett, and you were angry at Mr. Roman, right?

16 A Yes.

17 Q Were you angry at Ms. McNulty too?

18 A No.

19 Q So, let's look at DX 101 again, please, the top of the  
20 first page. This is a text message between you and Mr. Roman,  
21 October 31, 2018.

22 At 3:19 p.m. you said, you need to call me. Do you  
23 see that?

24 A Yes.

25 Q And then one minute later at 3:20 p.m. you texted him, I'm

O'BRIEN-170

1 leaving for the day, I'll call you when out the door, is that  
2 right?

3 A Yes.

4 Q So, you left for the day? You left the office and did not  
5 return, correct, after the screaming match?

6 A Correct. No, this is the wrong day because this is  
7 October 31st so this is the next day.

8 Q The 31st is the next day, the 30th, I apologize. So,  
9 let's go back up to the 30th, you say at 10/30/2018, can you  
10 give me a call when you get a chance, a couple of questions?

11 Would that be before or after? And I apologize for  
12 that, that I gave the wrong date.

13 A Can you see the time? I can't tell what the time is.

14 Q 22:51.

15 A Which is what time?

16 MS. SHIKUNOV: 10:51 p.m. It's minus 12 if it's  
17 military time.

18 THE WITNESS: That was in the morning.

19 BY MS. DIBIANCA:

20 Q So, that was before the screaming match?

21 A Yes.

22 Q Now, you know now that Ms. Barbonous made a complaint  
23 about you that day?

24 THE COURT: I'm sorry, I don't know if it matters but  
25 did you say that 22:00 was the morning?

O'BRIEN-171

1 MS. DIBIANCA: That's what the witness said, I  
2 didn't.

3 THE COURT: Do the parties agree that would have been  
4 the time?

5 MS. SHIKUNOV: There was talk at the deposition that  
6 this was Mountain Standard Time, which I don't know the  
7 conversion of.

8 So, I can agree that it was at 10:51, whether it's  
9 a.m. or p.m. I have no idea. And if it was that time in  
10 Philadelphia, I also do not know.

11 MR. CAVALIER: It's Israel time, plus 7.

12 THE COURT: Too much math.

13 MS. DIBIANCA: I'm counting on my fingers right now.  
14 So we'll just agree it was on the 30th, that's fair enough for  
15 now.

16 THE COURT: I'm sorry, I didn't mean to --

17 MS. DIBIANCA: Thank you, Your Honor, for the  
18 clarification.

19 THE COURT: Such that it wasn't.

20 MS. DIBIANCA: When the dust settles, no one will  
21 remember.

22 BY MS. DIBIANCA:

23 Q Now, you know now sitting here today that after the  
24 screaming match that day on the 30th, Ms. Barbonous later filed  
25 a complaint about that incident in particular, right?

1 A She had told me she did it when we met for coffee.

2 Q So, you are aware that she filed a complaint in the  
3 workplace about your behavior towards her on October 30th?

4 A Yes, I have been instructed to do the same.

5 Q You've seen the complaint, right?

6 A Yes.

7 Q Let's look at it, DX 26. Now, you did not write this but  
8 I'm just asking if you've seen this before?

9 This is an email from Lisa Barbonous on the afternoon  
10 of October 30, 2018 to Mr. Roman copying the Forum's in-house  
11 counsel, Mr. Fink, would you agree with that?

12 A Yes.

13 Q Let's go to, if you can, the bottom so we can see the  
14 original and we're not doing it backwards. That would be it  
15 right here. This is Ms. Barbonous's complaint to Mr. Roman.

16 A On the 30th.

17 Q That's right, exactly, at 1:47 p.m. and I'm going to read  
18 just excerpts of it.

19 Please read the whole thing so that you have context  
20 but what I'm going to point out is that she says I am  
21 constantly monitored and micro-managed.

22 Do you see that?

23 A Yes.

24 Q She says that today around noon I was having a  
25 conversation about the Tommy Robinson event with Tricia prior

O'BRIEN-173

1 to our call. I shut the door because I am constantly being  
2 reprimanded for being loud and I was trying to be respectful.

3 She says I would like to know that the only person  
4 who has an issue with my loudness is Marnie. Marnie proceeded  
5 to ask Matt, I'll infer there that's Mr. Bennett, why you were  
6 in my office with the door closed, making a big deal about  
7 nothing.

8 She says this is not the first occurrence, I am  
9 constantly monitored and singled out about my time in the  
10 office. When did you first see this complaint that Ms.  
11 Barbonous wrote about you?

12 A After we had spoken at coffee on the 31st, she had shown  
13 me what she sent.

14 Q She goes on to say, you can guarantee once every two  
15 weeks, Marnie calls me into her office to speak to me about my  
16 time. She claims that you view her as a manager, Marnie claims  
17 that Mr. Roman views Marnie as a manager, and she, Marnie,  
18 needs to deal with people being late.

19 Did you need to deal with people being late as the HR  
20 person?

21 A An HR person doesn't monitor somebody's lateness, the  
22 supervisor does, and then I guess it's handled in HR.

23 Q So, you would be the person to deal with it, correct?

24 A Correct.

25 Q Do you remember having conversations with Ms. Barbonous

O'BRIEN-174

1 about how you believe that Mr. Roman saw you as a manager and  
2 that Mr. Roman --

3 A Mr. Roman told me that, that's why I believed it.

4 Q I'm not arguing, I'm just going through the steps, and  
5 that you needed to deal with people being late. Remember  
6 telling Ms. Barbonous that?

7 A I don't.

8 Q Is there more we can look at? Thank you. She says in her  
9 complaint, I feel that Marnie targets me and has made it her  
10 mission to reel me in because she has said as much.

11 When did you tell Ms. Barbonous that it was your  
12 mission to reel her in?

13 A I don't remember saying that, I don't know what she's  
14 talking about that there.

15 Q Maybe I shouldn't use the word mission. Do you remember  
16 telling Lisa that it was your job to reel her in?

17 A Greg had told me to document her.

18 Q She says, additionally, when others are being loud, no one  
19 including Marnie ever says a word to them. Was Lisa the only  
20 one you dealt with for being loud in the office?

21 A Yes, she was loud.

22 Q The next paragraph says, I know I am being targeted. The  
23 next paragraph starts, we all know this is not the first  
24 occurrence of her singling me out.

25 I am fearful that with Marnie as the HR person my job

O'BRIEN-175

1 is in jeopardy. I believe this because when after we were in  
2 your office talking about your position a few weeks ago, Marnie  
3 said to me, quote, you are lucky it's not me because I would  
4 not have given it to you, end quote.

5 She also said that she told you that you should,  
6 quote, deal with my attitude before offering me any additional  
7 work, period. Did you tell Mr. Roman that he ought to deal  
8 with Lisa's attitude before he gave her additional work?

9 A So, he was saying he was going to give her additional  
10 content stuff and I don't know what was going on between them,  
11 but he wanted me in the office and he called her in to talk to  
12 her about giving her the additional responsibilities.

13 And I was excited for her because I knew she wanted  
14 that, and something had happened and she stomped through the  
15 door and she pulled the couch off the wall and sat in the chair  
16 and was like this -- and then he continued to give her the  
17 position.

18 The way that she behaved in that office, I would have  
19 never given her what she wanted at that point. She needed to  
20 be addressed for that but he didn't and he's the boss, and I  
21 told her that, I'm blunt.

22 Q You know that the Forum responded to Ms. Barbonous's  
23 complaint about you, correct?

24 A I think it was at the top, right?

25 Q I didn't mean there was an email chain, let me be more

O'BRIEN-176

1 specific. You know that them brought the Forum's in-house  
2 attorney, Mark Fink, into the loop, right?

3 A I did. Well, I was told that, actually I was told that by  
4 Greg.

5 He called me the next morning and said that Lisa  
6 filed a complaint against you and Mark's coming in the office  
7 and he's going to discuss it with everybody, but don't worry, I  
8 can make this go away.

9 Q He told you that the next morning and that means October  
10 31st?

11 A Let me think. Yes, it would have been the next day.

12 Q And you know that Mark Fink rarely came into the office?

13 A Correct.

14 Q So, when Mark Fink came in the office something generally  
15 serious was going on?

16 A He didn't come into the office, it was going to be on  
17 Friday.

18 Q But the only time he would come into the office was for a  
19 serious matter?

20 A Correct.

21 Q And he was higher than you in the chain of command as far  
22 as HR?

23 A Yes.

24 Q Were you worried it had escalated to a new level once  
25 Attorney Fink was involved?



O'BRIEN-177

1 A Yes, I was worried that Greg was getting rid of both of us  
2 at that point because I already knew he was targeting her, and  
3 then when he brought in Mark Fink to address my behavior, now  
4 he's targeting me as well.

5 Q So, you were worried that would you rather going to be  
6 fired over Ms. Barbonous --

7 A I absolutely 100 percent was.

8 Q I appreciate you being willing to answer the question but  
9 I just have to finish it for the record. So, you were worried  
10 that you were going to be fired over Ms. Barbonous' complaint  
11 against you, correct?

12 A No, I was worried that I gave him a reason to fire me, I  
13 gave him an excuse.

14 Q And Mr. Fink, the Forum's attorney, was going to come into  
15 the office that week to interview others about what had  
16 happened on October 30th, right?

17 A Correct.

18 Q And so I believe your deposition testimony is that you  
19 were, quote, immediately concerned that you were going to be  
20 fired?

21 A Absolutely.

22 Q So, the next morning --

23 A Excuse me?

24 Q Yes.

25 A I was concerned because Lisa and I had had that

O'BRIEN-178

1 conversation. When Greg called me after our conversation in  
2 the morning, I told him that I wasn't going to write her up and  
3 he wouldn't like what I was going to say because I knew about  
4 Israel at that time.

5 That's when I found out, that's why I was concerned  
6 that Mark Fink was going to get rid of me as well because he  
7 knew that I now knew, or suspected.

8 Q I suspect we may have gotten our dates a little wrong  
9 again so let's work through it. On October 30th you had the  
10 fight?

11 A Correct, and I left at the end of the day.

12 Q You stormed out after the fight?

13 A Correct.

14 Q And your testimony today is that Mr. Roman called you in  
15 the morning of October 31st and said you ought to submit a  
16 complaint too and I'm going to do my best to work it out?

17 A I was told on the 30th to submit a complaint.

18 When he was out of the office he would call in and we  
19 would talk, he'd talk to whoever he needed to talk to and when  
20 he talked to me, that's when he told me that he could make it  
21 go away.

22 Q I'm sorry, because you said that you knew about Israel but  
23 what would you have known about Israel on October 30th?

24 A I'm sorry, you're right, that was in the morning I found  
25 out about that so it wasn't until the next day after we had the

1 fight when we had coffee that she told me about it.

2 And he called me after that and that's when I was  
3 like, I'm not -- I was so mad.

4 Q So, he called you at what time on October 31st?

5 A He called the office, I spoke to him on the office phone,  
6 I believe I spoke to him on his cell phone too at some point in  
7 there.

8 Q Before you and Ms. Barbonous went out for coffee?

9 A After.

10 Q But you wouldn't speak with him because you were so mad?

11 A No, I did speak with him, yes.

12 Q And that's when he said he could make it go away?

13 A Correct, he told me that she wrote me up, Mark was going  
14 to come in but he could make it go away.

15 Q So, the morning of October 31, 2018, you sent a text  
16 message to Mr. Roman and said you were going to text Lisa this  
17 morning to see if she wants to meet for a cup of coffee before  
18 coming into the office so that we can smooth things over?

19 A Correct.

20 Q And were you hoping that you would avoid getting into  
21 trouble at that point?

22 A I didn't know anything about Mark Fink or that she had  
23 written me up at that point. I don't know if he called me or  
24 texted me that night and told me to call Matt Bennett and  
25 smooth it over with him.

O'BRIEN-180

1           So, I did that, Matt and I spoke, smoothed it over,  
2   and then the next day I was looking about going into the office  
3   the next day, thinking about going into the office the next  
4   day.

5           Greg and Matt were both not going to be there, it was  
6   just going to be the office staff and I thought that it would  
7   be really uncomfortable.

8           So, in the same vein where he instructed me to smooth  
9   things over with Matt, I told him I was going to reach out to  
10   her and smooth things over as well so that it wasn't awkward in  
11   the office the next day.

12   Q     And you and Ms. Barbonous did meet outside the office on  
13   October 31, 2018, correct?

14   A     Correct.

15   Q     You met at the Starbucks and then went and sat some place,  
16   is that right?

17   A     Yes.

18   Q     At that time, I'll call it a meeting, I don't know if  
19   that's perhaps too formal of a term, but during that meeting  
20   between the two of you, you and Ms. Barbonous, she expressed  
21   that she was worried about her job, right?

22   A     Yes.

23   Q     And then she tried to make some excuses about how she  
24   hadn't done the various things that she'd been accused of as  
25   far as her performance went?

1 A I don't recall discussing her performance.

2 Q During your deposition didn't you testify that Ms.  
3 Barbonous tried to make excuses about how she hadn't done the  
4 various things she'd been accused of as far as her performance?

5 A I don't remember my exact words but I remember that she  
6 was scared that she was going to lose her job, she felt like  
7 she was being persecuted, she couldn't do anything right, and  
8 she was working hard and was afraid of losing her job.

9 Q She told you that she felt that you were persecuting her,  
10 correct?

11 A Yes.

12 Q And she told you that she felt that you were harassing  
13 her?

14 A Yes.

15 Q By this point she also was fearful about being fired,  
16 wasn't she?

17 A Correct, I think she was fearful before that.

18 Q And you were afraid for your job too as of October 31,  
19 2018, weren't you?

20 A Yes.

21 Q And that was at least in part because Mr. Roman no longer  
22 relied on you as his right-hand person, right?

23 A Yes, I noticed that I had been kind of benched.

24 Q And that was in favor of Mr. Matthew Bennett, correct?

25 A Correct.

O'BRIEN-182

1 Q Matthew Bennett had started to do some of the point person  
2 things that you were doing for Mr. Roman at some point?

3 A Correct.

4 Q And Mr. Bennett speaks Hebrew?

5 A He does.

6 Q And Mr. Bennett has a number of skill sets that you don't  
7 have that are relevant to that position, correct?

8 A I don't know his skill set.

9 Q So, you were afraid that you were going to be fired at  
10 least in part because Mr. Bennett had taken on some of your  
11 role, right?

12 A I was afraid I was going to be fired because I told Mr.  
13 Roman that I didn't want to have sex with him. I felt I was  
14 going to be fired because I turned down Israel, because that's  
15 when it started to shift after that.

16 And after Ms. Barbonous told me what had happened to  
17 her in Israel and we had had that huge argument the day before,  
18 I felt that my days were numbered there.

19 Q At your deposition you testified you were afraid that you  
20 were going to be fired because Matthew Bennett had taken over  
21 the position of right-hand person to Mr. Roman. So, was that  
22 testimony true?

23 A It is true and he had taken it over because I had fallen  
24 out of favor because I wouldn't sleep with him, that's what I  
25 believe.

1 Q Because you wouldn't sleep with Mr. Roman?

2 A Yes.

3 Q That's your testimony?

4 A That's what I believe, yes.

5 Q Did Mr. Roman at any time ask you to sleep with him?

6 A He's much more calculating than that.

7 Q He did not, correct?

8 A He did not, no.

9 Q He never laid a hand on you, did he?

10 A He did not.

11 Q He never cornered you in the office, right? You were  
12 never physically afraid, were you?

13 A No.

14 Q He didn't hit on you, did he?

15 A He did, though it was very subtle.

16 Q So subtle, do you think, that he knew he was hitting on  
17 you?

18 A Yes.

19 Q And that was at that bar in September 2018?

20 A Yes, it was there.

21 Q So, I believe you testified last week that during your  
22 meeting with Ms. Barbonous on October 31, 2018, Ms. Barbonous,  
23 in addition to telling you that you were persecuting her, that  
24 you were harassing her, and that she was fearful because of you  
25 about being fired, she also told you that something

O'BRIEN-184

1 inappropriate had happened in Israel. Is that your testimony?

2 A Correct.

3 Q At that point, Ms. O'Brien, you were the human resources  
4 person --

5 A Correct.

6 Q -- receiving a complaint from an employee about what that  
7 employee claimed to be, or what you interpreted to be,  
8 inappropriate conduct by that employee's supervisor?

9 A Correct.

10 Q Would you agree that with me that the most basic duty of a  
11 human resources professional would be to report such a claim  
12 immediately to the person in power?

13 A Correct.

14 Q You did not immediately report it, did you?

15 A I was afraid to.

16 Q You did not immediately report it, did you?

17 A I did not.

18 Q You and Ms. Barbonous agreed that you would not report it  
19 right away, didn't you?

20 A She didn't want to report it so yes, we did, I'm sorry,  
21 you're right.

22 Q Let's look at DX 48, please. Your Counsel has moved this  
23 and the jury will be able to use it, it's the entire packet of  
24 text messages.

25 But, so we can move it along, I'm going to point you



O'BRIEN-185

1 to individual ones. This is a text message, your name at the  
2 time or in this contact was Myer, that was your married name  
3 but you're now O'Brien?

4 A Correct.

5 Q This is from you to Ms. Barbonous, and it's difficult to  
6 see because it's not her name there but that's her phone  
7 number, correct?

8 A Correct.

9 Q And this is October 31st?

10 A Correct.

11 Q You say to Ms. Barbonous -- this is immediately following  
12 the meeting after coffee, right?

13 A Correct.

14 Q You're walking away and you say they are going to ask what  
15 we talked about, like our similar personalities, how we need to  
16 respect each other's space, drawing lines between  
17 responsibilities and how we don't want to get emotional in the  
18 office anymore so we can work together better.

19 That was the cover story that you and Ms. Barbonous  
20 agreed to share, right?

21 A I certainly did not want Mr. Roman to know that she  
22 reported to me what had happened in Israel.

23 Q This was the story you agreed to tell, correct?

24 A So that we didn't get fired, yes. We were afraid he was  
25 going to fire us.

1 Q You're laughing?

2 A I'm not laughing, I really don't think this is funny at  
3 all, I'm sorry.

4 Q So, this was the cover story that you and Lisa agreed to  
5 tell?

6 A If that's what you want to call it.

7 Q You tell me what you want to call it.

8 A I would say while we were totally figure out how to handle  
9 this, because it was so scary, we just wanted everyone to think  
10 that there was no discourse between us.

11 And I didn't want anybody to know what she had told  
12 me, or that I knew that. I certainly didn't want Greg to know  
13 I knew it.

14 Q You can go to the next one. Ms. Barbonous immediately  
15 agreed to your proposal, saying that she was on board for all  
16 of that, right?

17 A Yes.

18 Q You can go to the next one as well, Mr. Hobbs, DX 49 and  
19 then DX 50. She said to all of that, right, she was on board  
20 to all of that?

21 MS. SHIKUNOV: I'm going to object to there being any  
22 further extrapolation as to what the claim language of the text  
23 message, they're being mischaracterized.

24 THE COURT: She's asking the witness, the witness can  
25 answer.

O'BRIEN-187

1 BY MS. DIBIANCA:

2 Q If we can go to DX 51, I'll let you read it, Ms. O'Brien.

3 What did you respond back?

4 A Good.

5 Q Good, smiley face, right?

6 A Yes.

7 Q DX 57, please. Less than an hour later, you texted Ms.

8 Barbonous and said what?

9 A We both need to be model employees right now.

10 Q So, you were further agreeing on your cover story, right?

11 MS. SHIKUNOV: I'm going to object to it being

12 characterized as a cover story, Your Honor.

13 THE COURT: The witness can answer, Counsel.

14 THE WITNESS: I don't agree to it being a cover

15 story, that's not a cover story. We did both need to be model

16 employees right now. He had tweaked the situation between us

17 so horribly that we were looking like the crazy ones.

18 We had just had an argument in the middle -- two

19 grown women almost fist-fighting in the middle of an office and

20 there's no evidence, and it's he said, she said.

21 And he's the boss and he's already gotten rid of

22 Tiffany Lee and he's already gotten rid of --

23 MS. DIBIANCA: I'm going to stop you because you're

24 running down a path.

25 THE WITNESS: I thought I was allowed to answer.

O'BRIEN-188

1 BY MS. DIBIANCA:

2 Q So, you said you both needed to be model employees right  
3 now, right?

4 A I did.

5 MS. SHIKUNOV: Your Honor, I would ask that she be  
6 permitted to finish her answer, she was being responsive to the  
7 question that was asked.

8 THE COURT: Respectfully, I don't think it was  
9 responsive. What is the question for the witness?

10 MS. DIBIANCA: The question before the witness is  
11 whether she said that we both need to be model employees right  
12 now.

13 THE COURT: Do you have more on that?

14 MS. DIBIANCA: I don't, I'm going to the next  
15 exhibit. Thank you, Your Honor. DX 59, please.

16 BY MS. DIBIANCA:

17 Q So, your Counsel doesn't object to my question, why don't  
18 you go ahead and tell us what you said to Ms. Barbonous in this  
19 text message? This is the same day or this is just minutes  
20 later, right?

21 A Yes.

22 Q What did you say here, Ms. O'Brien?

23 A We need to steer clear of each other around everyone else.  
24 I believe you about what happened in Israel. I said, they  
25 need to think we are at odds, though, they are trying to pit us

1 against each other, probably to get rid of both of us.

2 Q They need to think we are at odds, who's they?

3 A Greg, Matt, Stacy. I was afraid that --

4 Q Who are they?

5 A Greg, the office, everyone in the office, Dr. Pipes wasn't  
6 in the office.

7 Q Mr. Roman wasn't in the office either, though, right?

8 A But he would call in and ask who's doing what, what's  
9 going on, who's doing what so I didn't want anybody reporting  
10 back to him that, oh, Marnie and Lisa are in the office behind  
11 closed doors.

12 Q But this says they need to think we are at odds. You were  
13 not at odds with Ms. Barbonous when you sent this text message,  
14 right?

15 A No.

16 Q So, you wanted mislead Mr. Roman?

17 A I didn't want anybody to know what I knew because I was  
18 terrified that he would fire both of us before we could even  
19 figure out what to do.

20 Q Did you want to mislead the organization?

21 A No, I did not want to mislead the organization.

22 Q But you were not at odds but you wanted them to think you  
23 were at odds? So, you were hiding the situation at this time,  
24 correct?

25 A I was afraid for my job.

O'BRIEN-190

1 Q You were hiding the situation at this time, correct?

2 A Because I was afraid I was going to get fired.

3 Q You were?

4 A Because I knew.

5 Q You were hiding information at this time, yes or no?

6 A Yes.

7 Q So, as the HR person, you were instructing Ms. Barbonous  
8 at that time or at least suggesting to her at that time that  
9 she lie, correct?

10 A She did not want to file a complaint so I was trying to --  
11 well, she didn't know what she wanted to do so she was trying  
12 to figure it out and I said nobody can know.

13 It's a very small office, you tell one person and  
14 everybody knows. You can't let anybody know what's going on  
15 until you decide what you want to do, that was the mindset.

16 Q DX 65, please. How about this one, Ms. O'Brien, if you  
17 could read that to the jury so your Counsel doesn't object?

18 A We just need to be smart and no one else can know that we  
19 have each other's backs.

20 Q So, would you agree with me based on this text message  
21 that you were encouraging Ms. Barbonous to be secretive?

22 A I was trying to protect her and myself.

23 Q Were you encouraging her to be duplicitous?

24 A She wanted time to think about what she wanted to do and  
25 during that time, I was trying to protect her and myself.

O'BRIEN-191

1 Q We'll let the jury decide whether this is duplicitous or  
2 secretive. DX 78, please. This is another text message right  
3 in the string of it where you say, I'd like to look out for EMF  
4 but I'm in your corner.

5 In the meantime, I will be looking to cover my A-S-S.  
6 Were you looking to cover your butt at that time?

7 A I was afraid I was going to get fired.

8 Q So, you were looking out for yourself at that time, right?

9 A And Lisa and ended up MEF was Greg Roman.

10 Q You were not looking out for the Forum at this time, were  
11 you?

12 A I wanted to look out for the Forum.

13 Q But you didn't, correct?

14 A I didn't think I was going to be able to because Greg  
15 Roman, I was afraid, was going to get rid of me.

16 Q You'd say I'd like to look out for MEF but -- would you  
17 agree with me?

18 A Yes.

19 Q So, you agree with me that you were not looking out for  
20 MEF at this time?

21 A It says I really think DP and Mark would hear us if we  
22 went together and spoke from the heart. I wanted to look out  
23 for MEF.

24 Q But?

25 A She didn't want to report it.

O'BRIEN-192

1 Q That's not what it says, though, right? It says that you  
2 were looking to cover your --

3 A While she was trying to decide what she wanted to do, I  
4 was afraid that Mr. Roman was going to get us fired before she  
5 could decide.

6 And I was trying to encourage her, I really think DP  
7 and Mark would hear us if we went together and spoke from the  
8 heart.

9 Q DX 79, you then said, but I'm in your corner.

10 A I am, she was horrified, she had just fallen apart in the  
11 street and was crying, she was a mess and I was trying to  
12 support her.

13 Q You were in her corner?

14 A I was in her corner.

15 Q You felt that at this point if you played your cards  
16 right, you and Ms. Barbonous would not get fired and Mr. Roman  
17 would, correct?

18 That's from your deposition, you said that you  
19 believed if you played your cards right you and Ms. Roman would  
20 not get fired and Mr. Roman would.

21 Is that consistent with your recollection of your  
22 feeling at that time?

23 A If we played our cards right and he didn't know that we  
24 were filing a complaint him before we could do it, yes.

25 Q You wanted Mr. Roman to be fired, correct?



1 A At that point I did.

2 Q And at any point thereafter did you not want him to?

3 A Did I not want him to be fired?

4 Q Yes.

5 A I didn't want to work with him anymore.

6 Q You wanted to him to be fired, correct?

7 A I think he's a horrible boss, I think he's a horrible  
8 person.

9 Q You wanted him to be fired, right?

10 A Yes, I did.

11 Q Mr. Roman texted you after your meeting with Lisa, do you  
12 recall that? He asked you how it had gone with Lisa, didn't  
13 he?

14 A If you say so. I do remember, yes.

15 Q Let's look at DX 101 and see what you responded to Mr.  
16 Roman when he asked you how your meeting had gone with Lisa.  
17 It starts with, find, Mr. Hobbs and actually, the one before  
18 that just to give some context.

19 So, this is another text between you and Mr. Roman,  
20 10/31/2018, he texts you, how did it go. And what did you  
21 respond to Mr. Roman?

22 A Exactly what I had thought would help me buy some time.

23 Q What I referred to as the cover story, correct?

24 A Yes.

25 Q Then you went on to say to Mr. Roman, I do need to talk to

O'BRIEN-194

1 you about something though, do you see that? It's the same  
2 text?

3 A I don't see that.

4 Q Keep reading past, fine.

5 A It's enlarged, I can't see anything.

6 Q It's the same one, where it starts with, fine, we are very  
7 alike. Keep reading that.

8 A We are very alike, we just need to figure out how to  
9 respect each other, I do need to talk to you about something,  
10 though.

11 Q So, the person that you allege now had been the subject of  
12 a complaint that had Ms. Barbonous in tears, you told him what  
13 I referred to as the cover story. And then you said I do need  
14 to talk to you about something, though.

15 A I don't know what that was.

16 Q But you said it?

17 A I did, yes.

18 Q And then you said what?

19 A Not now, I'm in the office, I want to do my work and not  
20 incite drama.

21 Q So, you wanted to talk to Mr. Roman at some point later  
22 but not now, you didn't want to incite drama. Do you have any  
23 idea what you may have meant by that?

24 A Yes.

25 Q Pray tell.

O'BRIEN-195

1 A There's just so much story to it but Matt Bennett had been  
2 telling me that he was going to take the job as the executive  
3 assistant for Daniel and Greg and he was going to move Tricia  
4 into the director of development seat.

5 And I knew he was looking to get rid of Lisa already  
6 and I was blaming him, and when we did talk I yelled at him and  
7 screamed at him over all of this and I never talked to him  
8 about what Lisa told me because I was afraid.

9 But I did blame him for all of the discourse in that  
10 office and it was exactly what Ms. Barbonous said it was.

11 Q So, when you spoke to Mr. Roman you did yell at him,  
12 right?

13 A I did.

14 Q And this is someone you were saying you were scared of?

15 A I was scared, he was going to take my job.

16 Q But you yelled at him?

17 A I have a bad temper.

18 Q Then you go on to say, this has me nervous. Do you see  
19 the next text?

20 A Yes.

21 Q Especially when I'm supposed to be out of the office for  
22 two weeks. You were supposed to be out of the office for two  
23 weeks for a real estate course that you wanted to take,  
24 correct?

25 A Yes, it said, I want to do my work, is why I was nervous,

O'BRIEN-196

1 I wanted to to get my work done because I was going to be out  
2 of the office for two weeks.

3 Q I'm not asking why you're nervous, I'm just asking why you  
4 had been previously approved by Mr. Roman to take two weeks off  
5 to go to work from home for two weeks so that you could take a  
6 real estate course?

7 A Correct.

8 Q And you had previously requested that and he had  
9 previously granted that, no problem, correct?

10 A Correct.

11 Q And so now, on the day you allege, on the morning you  
12 allege -- I'll say morning but I don't know if that's true  
13 because of the timestamp so I can't say if it's morning or  
14 afternoon.

15 But shortly after you return from your meeting where  
16 Ms. Barbonous accused you of persecuting her and harassing her,  
17 and you allege that you were scared of Mr. Roman, if I'm  
18 understanding this text, you checked with him to make sure you  
19 were going to get that two weeks' time, right?

20 That was important to you at this moment?

21 A I was afraid if I was out of the office for two weeks that  
22 he would say I wasn't in the office for two weeks and I didn't  
23 have it in writing. But he had said I could do it.

24 Q But you didn't have it in writing before that either, did  
25 you? You were nervous now, you needed him to confirm now

O'BRIEN-197

1 because you thought he was going to get in trouble and not  
2 going to be there to confirm that you were allowed?

3 A No, that's not it at all. I was supposed to start it on  
4 that next Monday so all of this happened and then I was not  
5 going to be in the office for two weeks, and I had nothing in  
6 writing that said that was okay.

7 Q So, the day that you received this alleged complaint from  
8 Ms. Barbonous that had you so upset and scared, your first  
9 thought was to make sure that you got to take those two weeks  
10 off?

11 A My first thought was that I had paid for the course and it  
12 was starting and I had to go to it, and I was afraid already  
13 that I was going to get fired because of all of the shenanigans  
14 that have gone on.

15 And then I was going to be out of the office for two  
16 weeks with nothing in writing saying that it was okay or that  
17 anyone even knew it was happening.

18 Q Let's look at his response, down a little further, please,  
19 perfect. So, he responded back and told you you were good to  
20 go on the two weeks, right?

21 A Yes.

22 Q Now, later that day you told -- I say told but perhaps I  
23 should say you ask Mr. Roman if you could leave early, correct?

24 A It looks like it.

25 Q You said, and I'm looking at the last one, which is the

O'BRIEN-198

1 large one, this is to Mr. Roman, I'll be available later to  
2 talk, I'm honestly not much good right now anyway.

3 I walked away from coffee with her today feeling like  
4 we were going to work towards a better relationship and she  
5 frigging filed a complaint about me.

6 You're talking about Lisa Barbonous there, correct?

7 A It's hard to read because I have so many typos in it. He  
8 had said call me and I guess I didn't answer. I'll be  
9 available to talk later. I told you I was going to cover my  
10 rear end, I was afraid of him and every time I --

11 THE COURT: Ms. O'Brien, please listen carefully to  
12 the questions. Can you repeat the question?

13 BY MS. DIBIANCA:

14 Q When you say you walked away from coffee with her today,  
15 you were referring to Ms. Barbonous, correct?

16 A Yes.

17 Q And you walked away from coffee feeling like the two of  
18 you were going to work towards a better working relationship?  
19 Was that true?

20 Was it true or were you being manipulative with Mr.  
21 Roman?

22 A Is that manipulative? I think I was trying to cover my  
23 rear end, is what I was trying to do.

24 Q And you expressed, she frigging filed a complaint about  
25 me, so you were pretty upset that you found out that Lisa had

O'BRIEN-199

1 filed a complaint about you, right?

2 A She told me that, she told me at the meeting she filed it,  
3 that he made her.

4 Q Immediately after the meeting, you told Mr. Roman, fine,  
5 it went fine, we're very alike, no mention of a complaint.

6 Now, hours later, same day, you find out that she has filed a  
7 complaint against you.

8 A Like I said, I knew it at the time but now he had called  
9 me and said that she filed it and there was going to be a whole  
10 thing. It sounds to me you're calling me manipulative, I would  
11 say I was playing his game.

12 Q You say I try really hard to be good at my job, very  
13 upsetting to me. You were very upset, weren't you?

14 A I was.

15 Q That Ms. Barbonous had filed a complaint against you,  
16 right?

17 A The complaint was the least of my worries at that point.

18 Q But that's what you said here.

19 A That's what I said because he was holding it over my head.

20 Q There is no text from Mr. Roman that prompted this, was  
21 there? This is a request for you to leave early, isn't it?

22 You reach out to him and say you want to leave early  
23 for the day because your daughter has a new job, you want to  
24 see her off, and you have a headache and you're very upset,  
25 isn't that what you told him?

O'BRIEN-200

1 A That place was the last place I wanted to be, I wanted to  
2 get out of there. Again, I was afraid for him --

3 Q Your Honor?

4 A I don't know what to tell you, you keep telling me what I  
5 said. It's right there, you can see it, I was terrified, I was  
6 scared I was going to lose my job.

7 THE COURT: Ms. O'Brien, please, there's now a  
8 question before you. Counsel, please try to focus the question  
9 for the witness.

10 Q I will. You say the whole thing with Matt, what was the  
11 whole thing with Matt? And I presume you mean Bennett here,  
12 Mr. Bennett?

13 A Yes.

14 Q Do you have a recollection?

15 A We had had that argument.

16 Q Well, you had smoothed things over, you said, the night  
17 before?

18 A Right.

19 Q So, there was not a thing with Matt as of the day before  
20 this, so you don't know what the thing with Matt was?

21 A It was the same day I had the fight with Lisa, the thing  
22 with Matt, it was all the stuff that was going on.

23 Q But you testified that you went home that night and called  
24 Mr. Bennett and smoothed things over with him. This is the  
25 following day.



O'BRIEN-201

1 A Correct, but it was still there, there was all this stuff  
2 going on in the office.

3 Q So, it wasn't smoothed over?

4 A It was fine but there were issues in the office, there  
5 were fights that happened. The whole team had seen it.

6 Q What do you go onto say here?

7 A I say we should do a bowling night or something because we  
8 had done that before.

9 Q I'm thinking we should do a bowling night or something to  
10 get people to decompress.

11 A I was still working.

12 Q That was your suggestion to Mr. Roman, who you were  
13 terrified of and who was the puppet master of the office?

14 A Absolutely.

15 Q You suggested we should have a bowling night because  
16 people needed to decompress?

17 A Yes.

18 Q So, were you just manipulating him at that point?

19 A Again, I was just trying to keep my head above water.

20 Q Cover your rear end?

21 A Yes, my rear end.

22 Q If you can look at the bottom of that, DX 101, Mr. Roman's  
23 response, the three blocks here. He responds to you with  
24 kindness, wouldn't you agree?

25 He says give me a call, let's schedule bowling or

O'BRIEN-202

1 another activity, and you are excellent at your job. Was that  
2 an appropriate response?

3 A Yes, it was fine, I was out of the conversation.

4 MS. DIBIANCA: This would probably be a good  
5 opportunity to take a break if that suits the Court.

6 THE COURT: We'll have our afternoon break then.  
7 Folks, remember my earlier instructions, I want you to keep an  
8 open mind and you're not to discuss the case with anyone, even  
9 one another, okay?

10 (Whereupon, the above-entitled matter went off the  
11 record at 3:10 p.m. and resumed at 3:32 p.m.)

12 THE CLERK: All rise for the jury.

13 (JURY ENTERS COURTROOM.)

14 THE COURT: Thank you. Welcome back. Please be  
15 seated.

16 Attorney Dibianca?

17 MS. DIBIANCA: Thank you, Your Honor.

18 BY MS. DIBIANCA:

19 Q Ms. O'Brien, on November 1st at 2000 -- 2018, which was  
20 the day after your meeting with Ms. Barbounis, you sent Dr.  
21 Pipes a handwritten letter, correct?

22 A Yes.

23 Q Okay. And you described that handwritten letter last week  
24 during your testimony as Lisa's complaint, correct?

25 A Mm-hmm.

O'BRIEN-203

1 Q Okay. Just -- can you say yes for --

2 A Oh. Yes. Sorry.

3 MS. DIBIANCA: And if you can pull up PX10.

4 BY MS. DIBIANCA:

5 Q Your Counsel showed you this last week, so we're going to  
6 talk about it not in -- in every line, but I do want to talk  
7 about a few things. On the second page of the -- of the  
8 handwritten complaint about -- or I should say about Lisa's  
9 complaint --

10 MS. DIBIANCA: One more for me, Mr. Hobbs. There we  
11 go.

12 BY MS. DIBIANCA:

13 Q The bottom paragraph, it says, after our meeting, he  
14 called me and told me that Lisa had filed a complaint about me  
15 and that Mark was coming in to interview everyone about the  
16 situation and her accusations against me.

17 Now, does that help you remember whether Mr. Roman told  
18 you about the complaint on the 31st and not the 30th? You say  
19 after your meeting -- I presume that means after your meeting  
20 with Lisa -- he called me and told me.

21 A Okay.

22 Q So it was November 1st, right?

23 A Okay. Mm-hmm.

24 Q Okay. All right. You say that you had -- you wrote  
25 everything up on a notepad. You told Dr. Pipes that you'd

O'BRIEN-204

1 written everything up on a notepad, correct?

2 A I wrote the note. I hand-wrote the note. What do you  
3 mean, everything?

4 Q You -- in your complaint -- in the complaint, you wanted  
5 to write down everything so that you could give Dr. Pipes a  
6 really clear picture of what you called all of the shenanigans.

7 A The timeline -- that's not all of the shenanigans,  
8 clearly. But it was what had happened in the last couple days.

9 Q Do you remember that in your deposition, you testified  
10 that you'd written everything up on a notepad so that you could  
11 give Dr. Pipes a really clear picture of all of the  
12 shenanigans?

13 A Okay. Everything in the last couple days. I'll clarify  
14 it a little bit more because clearly that's not everything that  
15 ever happened.

16 Q Okay. And I believe you testified earlier, Ms. O'Brien,  
17 that as a Human Resources professional, you certainly  
18 understand the importance of documentation. Correct?

19 A Yes.

20 Q Okay, and that your documentation should be complete.  
21 Correct?

22 A Yes.

23 Q Okay. Can you point out for the jury where in your  
24 complaint you reported the conduct that you alleged occurred at  
25 the sports bar in September of 2018? I can handle this paper

1 copy if that -- if that's easier for you.

2 A I just -- is it on this page? I don't know that it's on  
3 this page.

4 THE COURT: If you have a paper copy, I think that  
5 would be helpful. Thank you, Counsel.

6 THE WITNESS: Thank you.

7 BY MS. DIBIANCA:

8 Q You didn't put anything in the -- in the handwritten  
9 letter to Dr. Pipes about what you contend occurred at the  
10 sports bar in September '18 -- 2018, did you?

11 A Okay. I guess not.

12 Q Okay. You didn't put anything in the -- the -- Lisa's  
13 complaint about what you claim you witnessed at AIPAC?

14 A No.

15 Q After Dr. Pipes read your -- the -- Lisa's complaint, he  
16 told you that he would be in the office shortly and was glad to  
17 meet with anyone or everyone. Correct?

18 A Correct.

19 Q Okay. Now, about that same time, Mr. Roman was calling  
20 you on the phone, right?

21 A About what time? When all this was --

22 (Simultaneous speaking.)

23 THE WITNESS: When I was writing the note?

24 MS. DIBIANCA: After you had -- just shortly after  
25 you had submitted it.

1 THE WITNESS: Okay.

2 MS. DIBIANCA: Next page. Next page. And next page.

3 MR. HOBBS: That's the last page.

4 MS. DIBIANCA: Sorry. Sorry. It is 1153 right there  
5 where your cursor is, Mr. Hobbs.

6 BY MS. DIBIANCA:

7 Q And then you say, Greg is calling me. I'm hesitant to  
8 speak with him. I'm not sure how to handle it. Should I let  
9 him know there has been an accusation filed?

10 Okay. So there was an accusation filed, and that was Ms.  
11 Barbounis's accusation. Correct?

12 A Yes.

13 Q Okay.

14 THE COURT: Counsel, if I may -- I'm sorry. Just --

15 MS. DIBIANCA: Sure.

16 THE COURT: -- who are the participants --

17 (Simultaneous speaking.)

18 MS. DIBIANCA: I -- thank you, Your Honor. So this  
19 is a Telegram message, which is -- would you agree with me  
20 Telegram is sort of a text messaging --

21 THE WITNESS: Yeah.

22 MS. DIBIANCA: -- between you and Dr. Pipes at the  
23 time?

24 THE WITNESS: Okay.

25 MS. DIBIANCA: Thank you, Your Honor. Thanks.

O'BRIEN-207

1 BY MS. DIBIANCA:

2 Q Did you tell Mr. Roman when he was calling you at 11:53  
3 that there had been an accusation filed by Ms. Barbounis?

4 A I don't believe so.

5 Q Okay. Two days after you filed the complaint for Lisa  
6 with Dr. Pipes, you brought two other coworkers into the  
7 conversation about it, right? Ms. Brady and Ms. Yonachek  
8 (phonetic)? Do you remember that?

9 A I brought two people into the conversation?

10 Q You had a conference call with them to discuss it. Do you  
11 recall that?

12 A I don't.

13 Q Okay. Dr. Pipes did come in that day, correct?

14 A He did.

15 Q November 1st?

16 A He -- he did.

17 Q Okay. And he met with you?

18 A Yes.

19 Q And he met with Ms. Barbounis?

20 A He met with everyone in the office.

21 Q Everyone in the office individually?

22 A Yes.

23 Q Okay. And did you tell him what you knew at that point?

24 A What I knew -- yeah. Well, some -- some of it.

25 Q Did you --

1 A I told him about the -- I can't remember what I  
2 specifically told him.

3 Q Okay. Did you not disclose part of it to him?

4 A I -- you know, I think I thought of, like, one thing and  
5 told him that. I didn't tell him every single offense at that  
6 point.

7 Q Okay. And you testified earlier today that you told him  
8 when you met -- when he met with you that there had been a  
9 dinner with you and Mr. Roman where you had gotten bad -- or  
10 you had gotten vibes from Mr. Roman. Correct?

11 A Right.

12 Q Okay. And you did not -- you were not able to tell Dr.  
13 Pipes at that time when that dinner occurred, correct?

14 A Okay. Probably. I still don't know.

15 Q Okay. Fair enough. But -- and you told him that you said  
16 you were not -- and I'm not going to use the word, but you  
17 would not sleep with him? You told Dr. Pipes that that was  
18 your response --

19 A Correct.

20 Q -- to Mr. Roman?

21 A Correct.

22 Q Okay. That was the only instance of inappropriate conduct  
23 directed towards you by Mr. Roman that you reported to Dr.  
24 Pipes, correct?

25 A At that time, yes.



O'BRIEN-209

1 Q Was there a time later when you reported more?

2 A No. You're -- you're right.

3 Q Right. Okay. So, just so we're all getting it clear on  
4 the record, the only thing that you ever reported to Dr. Pipes  
5 as far as what you believed was inappropriate conduct directed  
6 from Mr. Roman to yourself was the incident at the sports bar  
7 that you couldn't recall the date but that you know you had  
8 responded to Mr. Roman that you would not F him?

9 A Yes.

10 Q Okay. All right. By this point, November 1st, you had  
11 decided that Mr. Roman had to be fired in your mind. Correct?

12 A I -- I -- yeah.

13 Q That Saturday, November 3rd, you told Lisa, Ms. Barbounis,  
14 that you, quote, would not deal with him for another minute,  
15 meaning Mr. Roman.

16 A I didn't -- I didn't want to work with him anymore, no.

17 Q All right. So, on November 5th -- your complaint to Dr.  
18 Pipes was the 1st. He came in and met with each of the  
19 employees in the office. On November 5th, which I believe was  
20 a Monday, Dr. Pipes held an in-person staff meeting with all  
21 employees except Mr. Roman. Correct?

22 A Correct.

23 Q Okay. And you testified that -- last week that the  
24 meeting lasted about an hour. Right?

25 A I believe.

O'BRIEN-210

1 Q Okay. During that meeting, Mr. Pipes opened the  
2 conversation to allow anyone in the room to air any concerns  
3 they had about Mr. Roman. Correct?

4 A Correct.

5 Q You testified last week that the employees -- no one  
6 shared any claims of sexual harassment during that meeting. Is  
7 that correct?

8 A I can't remember what exactly was shared. I -- I know  
9 that everyone was hesitant to say very much in front of Stacy  
10 (phonetic).

11 Q Okay. Did you not share any information at that time? At  
12 the meeting, the all-staff meeting, did you reserve any  
13 information that you thought was important for Mr. -- Dr. Pipes  
14 to make his decision?

15 A I had told him -- I probably didn't say everything that I  
16 had told him when we met individually.

17 Q Okay. So that's fair. So, after the -- by the time you  
18 met with him individually, then the staff meeting -- by the end  
19 of the staff meeting on November 5th, there was nothing that  
20 you were holding back from Dr. Pipes; you had shared with him  
21 all of the relevant information that you thought you knew?

22 A I didn't sit down and think about every single instance at  
23 that point. I -- I -- I think the dinner was the biggest thing  
24 that stuck out in my head, so I shared that with him.

25 Q But you weren't holding back other -- other instances that

O'BRIEN-211

1 you thought were inappropriate behavior?

2 A Not intentionally. I just didn't -- there was a lot going  
3 on, and, like -- again, I said I was so scared, and there was  
4 just a lot going on. And my nerves were ridiculous. So I -- I  
5 didn't tell -- I didn't think of every single instance. I  
6 thought of that one specific instance.

7 Q And there were no instances that you later thought of that  
8 you went back and shared with Dr. Pipes, right?

9 A No.

10 Q Okay. Following the meeting on November 5th, 2018, Dr.  
11 Pipes announced that Mr. Roman would no longer be returning to  
12 the office. Correct?

13 A Yes.

14 Q Okay. Dr. Pipes informed Mr. Roman that he could no  
15 longer run the forum, correct?

16 A He removed his -- some of his administrative duties. He  
17 retained his -- his title. He retained his salary. And he  
18 continued to work with the project directors.

19 Q You were aware that prior -- the week before your meeting  
20 with Ms. Barbounis that Dr. Pipes had informed Mr. Roman and  
21 Mr. Bennett that Mr. Roman would be Dr. Pipes' successor at the  
22 forum, correct?

23 A I don't know if I knew that then or now, but Greg had been  
24 saying that for like a year and a half, that he was going to be  
25 the successor.

1 Q Okay.

2 A That was the whole -- yeah.

3 Q Do you agree with me that Dr. Pipes, as a result of the -  
4 - the complaint that you submitted on behalf of Ms. Barbounis -  
5 - that Dr. Pipes decided that Mr. Roman would no longer be his  
6 successor at the forum?

7 A I did not know that. But I felt that Dr. Pipes needed to  
8 know everything that was going on if he was going to leave the  
9 organization that he founded to Mr. Roman.

10 Q And he did not leave the -- the foundation?

11 A I -- I don't know.

12 Q Okay. Dr. Pipes removed Mr. Roman from the approval of  
13 expenses and initiatives, correct?

14 A Initiatives? What do you mean by initiatives?

15 Q That was your testimony at deposition.

16 A Initiatives?

17 Q Yes. So we'll break it down.

18 A Expenses --

19 Q So he removed -- he removed Mr. -- the -- Mr. Roman could  
20 no longer approve expenses for the forum.

21 A Correct.

22 Q Okay. Dr. Pipes removed Mr. Roman from any involvement in  
23 the hiring and firing of employees, correct?

24 A Correct.

25 Q Right. Dr. Pipes removed Mr. Roman from having a

1 supervisory role over employees, correct?

2 A Over women.

3 Q Okay. Who -- who did he not remove supervisory authority  
4 from?

5 A He was -- the project directors that were males still  
6 reported to them. There was one female project director that  
7 did not report to him anymore.

8 Q Who was the male project director?

9 A Well, there was a lot of them. I believe they all  
10 reported to him.

11 Q Okay. So, within the Philadelphia office, Dr. Pipes  
12 removed Mr. Roman from having any supervisory role over the  
13 employees in the Philadelphia office. Correct?

14 A Yes.

15 Q And that's where you worked, right?

16 A Yes.

17 Q Okay. Dr. Pipes took away Mr. Roman's authority to  
18 approve contracts on behalf of the forum, right?

19 A Yes.

20 Q Right. And Dr. Pipes told Mr. Roman that Mr. Roman was  
21 not to have contact with female employees outside of business  
22 hours other than via forum email, correct?

23 A Correct.

24 Q Okay. Dr. Pipes also instructed Mr. Roman to have no  
25 involvement in the forum's accounting, finances, or property

1 management, right?

2 A Correct.

3 Q Okay. And Mr. Roman was not allowed to come into the  
4 office without requesting access in advance so that there would  
5 be no female staff members there, or if they were, they would  
6 have to be comfortable with him being there in advance.

7 A Correct.

8 Q Okay. You were satisfied with the way Dr. Pipes handled  
9 the issue, weren't you?

10 A I never said I was satisfied with how he handled it. I  
11 was satisfied that he was attempting to handle it.

12 Q Okay.

13 MS. DIBIANCA: Let's look at DX92, please.

14 BY MS. DIBIANCA:

15 Q This is a text message from you to Ms. Barbounis on  
16 Thursday, November 8th. So that would have been one week after  
17 the Lisa complaint. And you say, I like the way Daniel  
18 operates.

19 Do you think you're referring to Dr. Pipes there?

20 A Yes.

21 Q Okay. So, as of Thursday, November 8th, would you agree  
22 with me that you were satisfied that the way Dr. Pipes was  
23 handling it was appropriate?

24 A I felt that he was trying to handle it appropriately.  
25 There's -- there's a -- they actually sent a -- after the

O'BRIEN-215

1 meeting, they sent an email and asked three questions, were we  
2 happy with how it was handled? And somewhere there's a  
3 statement in there that I wrote, and it says that I was happy  
4 that I felt like he was attempting to handle it properly.

5 MS. DIBIANCA: PX -- or DX50, please. Or maybe it's  
6 PX50.

7 (Off-microphone comment.)

8 MS. DIBIANCA: No, that's not it.

9 PARTICIPANT: Is it a D or a P? (Inaudible.) That  
10 was a D or a P?

11 MS. DIBIANCA: I'm going to check.

12 PARTICIPANT: Okay. Thank you.

13 (Off-microphone comments.)

14 BY MS. DIBIANCA:

15 Q From November 1st, the time of your complaint on behalf of  
16 Ms. Barbounis, through the end of your employment at the forum,  
17 you saw Mr. Roman just once. Correct?

18 A That -- that sounds about right.

19 Q Okay. When you did see him in the office on that one  
20 occasion, you knew in advance that he was going to be there,  
21 correct?

22 A Correct.

23 Q Okay. And you did not interact at all with Mr. Roman on  
24 that occasion, correct?

25 A I don't -- no. Mm-mm. No. I'm sorry. No.

O'BRIEN-216

1 Q Okay. That's okay. At no time after November 1st, 2018,  
2 did Mr. Roman conduct himself inappropriately with you,  
3 correct?

4 A Correct.

5 Q Okay. At no time after November 1st did you ever observe  
6 Mr. Roman make a sexual comment, correct?

7 A Observe it? The rumor came about where I was told that he  
8 had said that I slept with Dr. Brady. That came out after --

9 Q Did you ever observe him make a comment --

10 A No.

11 Q -- a sexual comment? Okay. At no time after November 1st  
12 did Mr. Roman make a sexual advance towards you, correct?

13 A Correct.

14 Q After November 1st, 2018, Mr. Roman never spoke to you in  
15 a manner that you thought was inappropriate, did he?

16 A No.

17 Q Okay. Other than the audit, which we'll talk about, after  
18 November 1st, 2018, you had no issues with Mr. Roman. Correct?

19 A Correct. I mean, I had animosity, but I didn't have --  
20 yeah.

21 Q There was no event that occurred?

22 A Right.

23 Q Okay. Your feelings towards him remained, but --

24 A Correct.

25 Q Okay. After November 1st, 2018, Mr. Roman did not



O'BRIEN-217

1 sexually harass you, correct?

2 A With the exception of the rumor.

3 Q Okay. At no time after November 1st, 2018, did Mr. Roman  
4 ever become your supervisor again?

5 A Correct.

6 Q Okay. After November 1st, 2018, you were never again  
7 during your employment with MEF, the forum, subject to any  
8 sexual comments or remarks by Mr. Roman --

9 A Correct.

10 Q -- correct?

11 A I'm sorry. Say -- can you say that again?

12 Q After November 1st, 2018, you were never subjected to any  
13 sexual comments or remarks by Mr. Roman?

14 A Except for the rumor that was going around after.

15 Q So we're dancing around it. We'll just get -- we'll just  
16 talk about the rumor. The rumor, to the best of your  
17 knowledge, was started before November 1st, 2018, wasn't it?

18 A Yes.

19 Q Okay. So at no time after November 1st, 2018, did Mr.  
20 Roman, to your knowledge, ever make any sexual comments at all?

21 A Correct.

22 Q Okay. And just so the jury, you, and I are on the same  
23 page on this, the rumor that we're talking about Ms. Barbounis  
24 told you after November -- sometime after November 1st, 2018,  
25 that she had heard that Mr. Roman had started a rumor about you

1 sleeping with your former boss. Right?

2 A She said he told her that.

3 Q Okay. And that she told him -- that he told her that  
4 before November 1st, 2018?

5 A Yes.

6 Q Okay. So you found out about the rumor from Ms. Barbounis  
7 -- we'll assume that the rumor, for this purpose, occurred  
8 after November, but the rumor had not been circulating. It was  
9 not circulating at that time, correct?

10 A I mean, that's what rumors do. Once you start them, they  
11 -- they're out there.

12 Q Who was talking -- who was spreading the rumor after  
13 November 1st?

14 A Well, Lisa had told me, and then I --

15 Q We'll just take that -- just take that one at a time. So  
16 Lisa told you, so she wasn't circulating the rumor; she was  
17 telling you.

18 A And, you know, I was upset about it. And Trisha McNulty  
19 (phonetic) had said that Matt Bennett had told her the same  
20 thing.

21 Q And when did that happen?

22 A That was, like, right around the same time.

23 Q Right. After -- before November 1st, 2018?

24 A After. It was after.

25 Q Did you ever report that to Dr. Pipes?

O'BRIEN-219

1 A Well, wait. The conversation when I found out about it  
2 was after. It was started before.

3 Q Right.

4 A Okay. I -- I misunderstood you.

5 Q Okay. That's all right. So it was circulating before  
6 November 1st, 2018.

7 A But it was still circulating because --

8 Q Who was circulating it after?

9 A -- people were still talking about it.

10 Q I apologize for interrupting. Who was circulating it?

11 A I don't know. How can I know who was circulating it or  
12 who knew or who was talking about it at that point?

13 Q So, to your knowledge, no one was.

14 A Well, when somebody tells you that somebody started a  
15 rumor about you, you think everybody's talking about it.

16 Q Okay. Fair enough. You were not -- after November 1st,  
17 2018, you were not subject to any unwanted sexual advances by  
18 Mr. Roman?

19 A Correct.

20 Q Okay. And you did not interact with Mr. Roman at all in  
21 early 2019, right?

22 A No.

23 Q Okay. In March 2019, some of your coworkers approached  
24 Dr. Pipes about having Mr. Roman resume some of his  
25 administrative duties. Do you recall that?

O'BRIEN-220

1 A I learned that, yes.

2 Q Okay. That was the predicate -- that was the event that  
3 preceded the phone call between you and Ms. Barbounis that we  
4 heard earlier in the testimony, correct?

5 A I'm sorry.

6 Q That's okay. We'll go through it. So everyone in the  
7 office -- is it correct to say that everyone in the office  
8 except for you was in favor of Mr. Roman returning on a limited  
9 basis to some of his administrative duties?

10 A No.

11 Q Who objected other than you?

12 A Delaney Yonachek and Katrina Brady did not want him in  
13 there either.

14 Q Okay. You voiced your opposition to Mr. Roman resuming  
15 some of his administrative responsibilities, right?

16 A I did.

17 Q Okay. And Dr. Pipes, in response to that opposition,  
18 explained to you that you would under all circumstances  
19 continue to report to Dr. Pipes and Dr. Pipes alone, and that  
20 Greg Roman would not become your supervisor again. Correct?

21 A And -- and Mark Fink (phonetic).

22 Q Okay. At the meeting in March 2019, the women in the  
23 office except for you and perhaps -- at least some of the women  
24 in the office decided that Mr. Roman would be reassigned to  
25 some of his former administrative duties, right?

O'BRIEN-221

1 A Yes.

2 Q Okay. He did not get a key to the office, though,  
3 correct?

4 A No.

5 Q He did not return to the office, correct?

6 A No.

7 Q Okay. But finance, which was your area, would still  
8 report to Dr. Pipes.

9 A Correct.

10 Q Okay. And that was because you did not want Mr. Roman to  
11 oversee anything you did, right?

12 A Correct.

13 Q Okay. In July -- I'm sorry. In early June -- that was  
14 March 2019. In early June 2019, you objected to Mr. Roman  
15 being involved in the forum's financial audit. Correct?

16 A Yes.

17 Q Okay. You voiced your objections to Dr. Pipes, right?

18 A He was supposed to be out of the financial. That was one  
19 of the -- one of the reasons that I would stay there was that  
20 he would not be involved in the finances is one of the things  
21 that would make me happy, I would say.

22 Q Okay. The only involvement Mr. Roman had in the -- what  
23 you're describing as the finances was his role in the audit.  
24 Correct?

25 A After?

1 Q After November 1st, 2018.

2 A He wasn't supposed to have any role in the finances.

3 Q But the only -- you contend that he did, right?

4 A Yes.

5 Q And that -- but the only contention that you have is that  
6 he was involved in the audit?

7 A They had -- yes.

8 Q Okay. He wasn't writing checks?

9 A No.

10 Q Okay. He wasn't approving expenditures?

11 A I don't think so.

12 Q Okay. Dr. Pipes, when you voiced your objection,  
13 responded that Mr. Roman was the only person with sufficient  
14 knowledge of the forum's finances and that, for that reason,  
15 Mr. Roman would have to be involved in the audit. Correct?

16 A Yes.

17 Q Okay. And, at that time, you turned over the audit to Mr.  
18 Roman and the auditors, and you had no further role in it.  
19 Correct?

20 A I -- yes.

21 Q Okay. You claim, I believe last week perhaps, that you  
22 did not want Mr. Roman to have, quote, access to your work  
23 product. Is that correct?

24 A That's correct.

25 Q Okay. And that work product was the forum's financial

O'BRIEN-223

1 reports, right?

2 A Correct.

3 Q Okay. So you took issue with Mr. Roman having access to  
4 the forum's financial reports.

5 A I did.

6 Q Okay. You know, don't you, that as a nonprofit  
7 organization, the forum is obligated by the IRS guidelines to  
8 make their financial reports a matter of public record, don't  
9 you?

10 A Correct.

11 Q Okay. So Mr. Roman has access to the financial reports  
12 via the internet like every other person with internet access,  
13 right?

14 A After. Yes.

15 Q Once they're published.

16 A After they're published.

17 Q Right.

18 A Correct.

19 Q So everyone with internet access technically has access to  
20 your work product, don't they?

21 A Once they're published.

22 Q Correct. Okay. You were not fired, were you?

23 A I was not.

24 Q Okay. You resigned -- you resigned -- I believe your  
25 testimony was February 28th, 2020?

O'BRIEN-224

1 A I actually do think it was the 29th because --

2 Q Okay.

3 A -- I think it was a leap year.

4 Q Okay.

5 A But it -- it was the 28th or the 29th.

6 Q Okay. You -- you testified last week that you -- the end  
7 of your employment, you started working from home. Correct?

8 A I was instructed to work from home.

9 Q And you thought that that was a punishment, right? Well,  
10 let me ask you this. You didn't think it was a vacation, did  
11 you?

12 A I felt like they were restructuring, and they didn't want  
13 me to be a part of that structure.

14 Q But you working from home was not a vacation, was it?

15 A It was nice.

16 Q Okay.

17 A I didn't have to drive in to the office, that type of  
18 thing.

19 Q Okay. Not so bad. Fair enough?

20 A Yes.

21 Q Okay. You resigned voluntarily, correct?

22 A Yes.

23 Q No one forced you to quit, right?

24 A I felt pushed out.

25 Q But no one forced you to quit?



1 A No.

2 Q Okay. You had been interviewing for jobs?

3 A Yes.

4 Q Okay. When did you start interviewing for jobs?

5 A Oh, early. I mean, I was -- I had been applying for  
6 months.

7 Q Did you start looking for work in 2017?

8 A I'd have to look, but I was definitely throwing out, you  
9 know, my résumé and -- and replying to jobs that I would see.

10 Q So, if we can look at DX136, this is the PeopleShare file  
11 from the recruiter. There's -- the first page of the document  
12 is a -- what I would represent to you looks like a cover letter  
13 from you dated December 5th, 2017. So does this help refresh  
14 your recollection as to whether you were looking for a new job  
15 as of December 5th, 2017?

16 A That was from PeopleShare?

17 Q Correct.

18 A I'm trying to think. I -- I mean, I guess. I think that  
19 seems early at that point, but --

20 Q This was before the -- the incident at -- or the -- the  
21 dinner at the sports bar, right? That was September 2018.  
22 This is December 5th, 2017.

23 A Yeah. I'm wondering if I had a wrong date. I didn't  
24 change the date on it. But yeah.

25 Q Okay. When you resigned from the forum, you already had

1 another job lined up, correct?

2 A I did.

3 Q Okay. And that job was with a company in Cherry Hill, New  
4 Jersey, called 1 Creation Construction. Right?

5 A Yes.

6 Q You were supposed to start that new job with 1 Creation  
7 Construction on March 16th, 2020?

8 A Yes.

9 Q And you never started that job, correct?

10 A I did not.

11 Q And that was because of the pandemic?

12 A Correct.

13 Q Okay. So the pandemic was the reason that you're not  
14 currently working for 1 Creation.

15 A Correct.

16 Q Okay. My client had nothing to do with you not starting  
17 at 1 Creation, right?

18 A No. No.

19 Q Okay. You also are still a licensed real estate broker,  
20 correct?

21 A Correct.

22 Q Dr. Pipes also approved you to take that time off for that  
23 real estate course, didn't he?

24 A He did.

25 Q Okay. And your current --

O'BRIEN-227

1 A But I -- can I just clarify --

2 Q Sure.

3 A -- that I didn't really take the time off? I just woke up  
4 at like 4:30, 5:00 in the morning. I worked as much as I could  
5 before I had to leave. I would go to the -- the class, and  
6 then I would come home and work when I got home.

7 Q How much of your time currently do you spend on real  
8 estate?

9 A I -- I network for it, but not a ton, because I don't know  
10 that much about it and it was just running so rampant that I  
11 couldn't get -- I got three houses.

12 Q Sold?

13 A Yes.

14 Q And when did you sell those three houses?

15 A I would have to look at the deeds. But they were -- it  
16 was in 2020.

17 Q It was in 2020. Have you produced your tax returns for  
18 2020 in this case, Ms. -- Ms. O'Brien?

19 A I don't -- I think I did.

20 Q You also have a consulting business called GC4, right?

21 A Correct.

22 Q You've had that business since 2012?

23 A Yes.

24 Q Okay. Your bookkeeping business did not take a hit  
25 because of the pandemic, correct?

1 A Yeah.

2 Q Okay.

3 A Yes. Sorry.

4 Q And you don't want to work for anyone else, do you?

5 A I -- I am afraid to work for anyone else, to be quite  
6 honest. So I'm trying to build that up as much as I can, but  
7 I'm still looking for work because --

8 Q You testified in your deposition that you do not -- you  
9 don't want to work for anyone else, and you have no plans to  
10 look for another job. Was that testimony correct at that time?

11 A When did I say that?

12 Q At your deposition in January 2021.

13 A Well, it might have been correct at that time, but I --  
14 you know, it's hard -- I'm building my business. If it doesn't  
15 build as fast and I -- you know, if I don't get it built up to  
16 where I need it to be, then I need to get a job.

17 Q Okay. You testified last week that when you took the job  
18 with the forum, you took it for reduced pay. You took a pay  
19 cut to take that job. Do you remember that testimony?

20 A I did, from what I was making before.

21 Q And you testified that the job you left -- left to join  
22 the forum paid something like \$85,000 a year.

23 A Correct.

24 Q Okay. So that would have been a pay cut of about \$14,000  
25 a year when you joined the forum?

O'BRIEN-229

1 A Okay.

2 Q Is that right?

3 A Sounds right.

4 Q So the cover letter earlier, that said you made \$71,000  
5 when you were hired, right?

6 A Correct. I -- I don't know that that was right, though.  
7 I thought I started at 79.

8 Q But you saw the offer letter that said 71?

9 A That was an offer letter.

10 Q Okay. Ms. O'Brien, you did not leave a job to join the  
11 forum, did you?

12 A I had -- I had -- no, I was still working for my -- myself  
13 at that point. The job that I had previously, before I was  
14 doing GC4, I made 85,000. And then when I was working at --  
15 for myself, I had built myself up there.

16 Q You made \$85,000 at the job before the forum? And what  
17 job was that?

18 A At the American Institute for History Education.

19 Q You hadn't been employed there --

20 A Right. That's what I'm --

21 Q -- for three years, correct, before you took the job at  
22 the forum? Right?

23 A I was working for myself, GC4.

24 Q Okay. You didn't make \$85,000 at the time you joined the  
25 forum, did you, Ms. O'Brien?

O'BRIEN-230

1 A I was close.

2 Q Your -- your tax return said \$43,000 that year.

3 A Well --

4 Q Was that close to \$85,000?

5 A I -- I -- because I am an LLC, it could be a little bit  
6 higher and the expenses bring it down.

7 Q Okay. So let's -- let's write it down. Your testimony is  
8 that you made \$85,000 at the American Institute.

9 A Yes.

10 Q Okay. And then you did not work for another employer for  
11 three years --

12 A Correct.

13 Q -- after leaving that job before joining the forum.

14 A Correct.

15 Q Correct? So is it accurate to say that you did not take a  
16 pay cut to join the forum from the American Institute? You  
17 hadn't been there --

18 A No.

19 Q -- for over three years.

20 A Okay. That's fair. Yes.

21 Q Okay. So, at the time you joined the forum, you were  
22 making roughly \$43,000 a year with your consulting business.

23 A Okay.

24 Q Okay. And so, when you joined the forum at a rate \$71,000  
25 a year, it was a significant increase. Right? 43 to 71.

O'BRIEN-231

1 A Okay.

2 Q Okay. You're a bookkeeper, right? Your --

3 A Yes.

4 Q -- your department is finance.

5 A Yes.

6 Q Okay. Let's talk about your emotional distress. Ms.

7 O'Brien, is it fair to say that you've had a number of

8 stressors in your life since you left the forum?

9 A Everyone has stressors in their lives.

10 Q Right, and we're talking about you because you're here

11 seeking emotional distress damages.

12 A Okay. Yes.

13 Q Okay. For example, you went through COVID like the rest

14 of us. Right? That was very stressful.

15 A Of course.

16 Q Right. You testified in your deposition, I believe, that

17 you feared that we were all going to die, understandably.

18 A In -- in the beginning, yeah.

19 Q In the beginning. Right. So would you agree with me that

20 COVID was a significant stressor on you for a significant

21 period of time?

22 A Sure.

23 Q Okay. Has this litigation been stressful to you?

24 A Yes.

25 Q Yes. Okay. How -- about how long has this been going on?

O'BRIEN-232

1 A I mean -- well, since June of -- was it 2018, I guess?

2 Q 2019.

3 A '19.

4 Q Okay.

5 A But it's not every day.

6 Q Okay. Okay. Fair enough. Of course, we also had  
7 testimony about your -- your -- I believe your Counsel called  
8 him a paramour. I'll say live-in boyfriend, Matthew Ebert. He  
9 has been a source of stress for you, correct?

10 A Yes.

11 Q When you testified last week, I noticed that you cried  
12 several times on the stand when you discussed Mr. Ebert.  
13 Correct?

14 A Yes.

15 Q Okay. You agree with me that Mr. Ebert, your boyfriend,  
16 intentionally tried to sabotage your job opportunity with the  
17 Kimmel Center, correct?

18 A Agreed.

19 Q Okay. And that you were living with Mr. Ebert when you  
20 found out that he had intentionally tried to sabotage your  
21 employment opportunity?

22 A Yes.

23 Q Okay. In fact, you were living with him in quarantine  
24 during COVID, and you testified, I believe, that you had  
25 nowhere else to go at that time. Right?



1 A Correct.

2 Q Okay. Do you have someplace else to go at this point?

3 A I do.

4 Q But you and Mr. Ebert are still together, correct?

5 A We are.

6 Q Okay. I believe you testified during your deposition that  
7 learning that your boyfriend, Mr. Ebert, had intentionally  
8 tried to sabotage your employment opportunity was  
9 heartbreaking.

10 A It was.

11 Q Okay. And that you had to hide that stress from your  
12 children, right?

13 A Yes.

14 Q Okay. And that, too, was stressful?

15 A I don't know how stressful that was, but everybody hides  
16 stuff from their kids.

17 Q Losing your employment with 1 Creation Construction was  
18 also stressful?

19 A Yes.

20 Q Despite the existence of the many stressors and the  
21 heartbreaking revelation that your domestic partner, Mr. Ebert,  
22 intentionally tried to sabotage your job prospects, you have  
23 not sought therapy, have you?

24 A I -- I have not.

25 Q Right. You have not sought counseling of any kind?

1 A No.

2 Q No mental health treatment, correct?

3 A No.

4 Q Okay. You rely on marijuana to deal with your emotions,  
5 correct?

6 A That is incorrect.

7 Q That is what you testified at your deposition. So why  
8 don't you explain that to us?

9 A I -- I said I rely on it to -- for my emotions?

10 Q What's the role of marijuana in your life?

11 A I said it helps me sleep.

12 Q Okay. You don't smoke it just at night, though, correct?

13 A Yes, I do.

14 Q You testified that you smoked it with Ms. McNulty.

15 A At -- at a party or whatever, one time. But that's not  
16 every day. I don't do that every day.

17 Q At your deposition, you actually talked about several  
18 times that you'd smoked marijuana, and none of those times were  
19 at night to sleep. So are -- are there other times that you  
20 smoke marijuana?

21 A They were socially, I guess you could say.

22 Q Okay. You're a social user?

23 A Every so often. I don't like to do it outside of my  
24 house. I prefer to be home.

25 Q Okay. But you do.

1 A Occasionally.

2 Q Okay. And you use it every day.

3 A To get to sleep at night.

4 Q Every day?

5 A A couple hits, yes.

6 Q A couple hits. Okay. You don't have --

7 A I'm not Cheech and Chong. You're not going to see me roll  
8 out of a smoke-filled car.

9 Q Okay. You don't have a license for it, do you?

10 A I do not.

11 Q You get it from Mr. Ebert?

12 A I get it.

13 Q That's what you testified at your deposition. So --

14 (Simultaneous speaking.)

15 A Okay. I get it from Mr. Ebert.

16 Q -- Mr. Ebert or somebody else?

17 A I get it from Mr. Ebert.

18 Q Okay. Before that, before you met him, you -- before you  
19 started dating him in May 2019, you smoked weed, or smoked  
20 marijuana, correct?

21 A I did occasionally, yeah.

22 Q Every day to sleep or occasionally?

23 A Not every day.

24 Q So that was a new habit when you met Mr. Ebert?

25 A No. It was after I left the forum is when it was.

1 Q Okay. But you smoked marijuana when you were employed at  
2 the forum, right? You talked about that at deposition.

3 A Yes.

4 Q Okay. You take medicine for your ADHD?

5 A I do.

6 Q Okay. Do you take anxiety medicine?

7 A I do not.

8 Q Okay. Does your ADHD medicine make you anxious?

9 A No.

10 Q Okay. Are you aware that it could make you anxious?

11 A They had me on 30 milligrams in a day, and it made me  
12 anxious. So I backed it down.

13 Q Okay. I'm going to switch now, as my last section -- and  
14 I know everyone's relieved to be done with me -- the  
15 counterclaim. Okay? And then we're finished. When I say the  
16 counterclaim, I'm -- I'm talking about the claim that my  
17 client, Mr. Roman, filed against you in that second lawsuit  
18 that we discussed -- that was discussed last week. You  
19 remember the second lawsuit that you filed against my client,  
20 correct?

21 A Yes. Yes.

22 Q That second lawsuit was based on an anonymous call that  
23 was placed to the Kimmel Center, correct?

24 A Correct.

25 Q And the anonymous caller told the Kimmel Center that you

1 were a drug addict --

2 A Correct.

3 Q -- and that you were suing your former employer. Correct?

4 A Yes.

5 Q Okay. Did the anonymous caller say anything else to the  
6 Kimmel Center that you're aware of?

7 A Not that I'm aware of.

8 Q Okay. And the anonymous caller was your boyfriend, right?

9 A Correct.

10 Q Okay. You filed two charges of discrimination with the  
11 United States Equal Employment Opportunity Commission, right?

12 A Yes.

13 Q Yes. Let's look at our first charge, which is DX125.  
14 It's dated July 24th, 2019. Does that appear to be the charge  
15 that you filed?

16 A Yes.

17 Q Okay. The very last sentence in this -- on this page --  
18 and the document is several pages long, but on the last -- the  
19 last sentence on the page, you say she -- meaning you -- never  
20 went to the office with him -- Mr. Roman -- that night and  
21 never -- she never attended another dinner meeting. Is that  
22 correct?

23 A I don't believe we went one-on-one anywhere again.

24 Q Okay. Let's look at the second charge, please, DX126.

25 You signed this charge, just like you did the first one, under

O'BRIEN-238

1 the penalty of perjury. Correct, Ms. O'Brien?

2 A Yes.

3 Q Okay. The second paragraph toward the end says the caller  
4 -- we're talking about here the anonymous call that was made to  
5 the Kimmel Center. The caller would leave a message with  
6 prospective employers and state that Ms. O'Brien was a drug  
7 addict who only got her previous job by sleeping with the boss,  
8 and discouraged offering Ms. O'Brien employment.

9 A I don't recall them saying that that's what he said. That  
10 -- that might have been an accident because we were doing the  
11 different claims. That might be a typo. I don't remember them  
12 saying that to me.

13 Q You signed this under the penalty of perjury, correct?

14 A Yes.

15 Q Okay. But it's your testimony now that the Kimmel Center  
16 -- the call to the Kimmel Center didn't include anything about  
17 you sleeping with your boss?

18 A I don't recall that now, but now I just remember drug  
19 addict and suing your employer.

20 Q Okay. You say the caller would leave a message with  
21 prospective employers. Other than the Kimmel Center, Ms.  
22 O'Brien, were there any other prospective employers that got  
23 this anonymous call?

24 A No.

25 Q No. Okay. The sentence before that talks about the

1 companies she applied to in the plural, the companies. Were  
2 there companies other than the Kimmel Center that you applied  
3 to that got this call?

4 A No. The Kimmel Center is the only one that I know.

5 Q Okay. So this is a bit exaggerated. Is that correct?

6 A It should have been -- I should have paid closer  
7 attention to the verbiage.

8 Q Okay.

9 A It was a little overwhelming for me. I'm not used to that  
10 sort of thing.

11 Q It was a little over what?

12 A Overwhelming, the -- the process of all the charges and  
13 everything.

14 Q Well, this was your second charge, right?

15 A Correct.

16 Q Right. Now, you testified on Friday that you didn't know  
17 how PeopleShare got your information in order to set up that  
18 interview at the Kimmel Center. Do you remember testifying to  
19 that?

20 A Yes.

21 Q And your -- you theorized at that time that you suspected  
22 that perhaps Mr. Roman may have given the -- your information  
23 to PeopleShare so that they would get you an interview that he  
24 could then sabotage, right?

25 A At that point, I had been so beaten down by Mr. Roman. He

1 threatened us for years about --

2 Q Just --

3 A -- being able to get into --

4 (Simultaneous speaking.)

5 Q -- the question.

6 A Yes.

7 Q Yeah. That's what your testimony was on Friday, that you  
8 thought that he had set the whole thing up in an elaborate  
9 scheme to get you sabotaged.

10 A I -- I don't know that I thought that he sent them my --  
11 my résumé, but I thought he knew about the interview.

12 Q Okay. But you know now that you provided your résumé to  
13 the PeopleShare in 2017, right?

14 A Correct.

15 Q Okay. So Mr. Roman didn't get PeopleShare that résumé and  
16 then set up an interview so that he could then sabotage it,  
17 right?

18 A I don't remember saying that that's what I thought he did.

19 Q Okay.

20 A I thought he saw in my calendar or that he knew.

21 Q Did -- would you have put an interview for new -- a new  
22 job on your calendar, Ms. O'Brien --

23 A In my Gmail. It was in my Gmail calendar.

24 Q Okay.

25 A I thought Mr. Roman could access my phone because he told



1 me that he could.

2 Q Okay. You thought he could access your personal phone?

3 A Yes.

4 Q Okay.

5 A And I also would check my Gmail on my laptop, or not my  
6 laptop, but my -- my -- my desktop, which he had access to.

7 Q The allegation in your second charge where you said that  
8 the caller would leave a message with prospective employers,  
9 that was a false allegation, wasn't it?

10 A I'm sorry. Can you say that again?

11 Q In your charge -- we just reviewed it, and you testified  
12 that there were no other prospective employers that got a  
13 message from an anonymous caller. But you said in your charge  
14 that there were. You said that the caller would leave a  
15 message --

16 A That was --

17 Q -- with prospective employers. So that was a false  
18 allegation you made against my client, right?

19 A Well, no. It was true. I mean, it was -- I alleged that  
20 he did it. The verbiage was wrong. It shouldn't have been  
21 several. It should have been one.

22 Q Okay. So it was a false allegation that -- that it  
23 happened to multiple prospective employers, correct?

24 A Correct.

25 Q Let's look at DX128, please. This is your second lawsuit

1 that you filed against my client on January 27th, 2019. Let's  
2 go to paragraph 10. You were -- you testified earlier that you  
3 were the Director of Finance and Administration at the forum,  
4 right?

5 A Yes.

6 Q Okay. Let's look at paragraph 24, please. Okay. In  
7 paragraph 24, you say the Plaintiff received -- that's you -- a  
8 call from your headhunter, and the headhunter told you that  
9 after your interview, the prospective employer received a call  
10 from a blocked number informing the prospective employer that  
11 Plaintiff was a drug addict and currently suing her employer.

12 So you didn't make any mention in your complaint about the  
13 anonymous caller saying anything about you sleeping with your  
14 boss.

15 A Correct.

16 Q Okay. So the -- the allegation in the charge number 2  
17 about the anonymous caller, who you contended was Mr. Roman,  
18 saying that you slept with your former boss -- that also was a  
19 false allegation in that charge, correct?

20 A I'm sorry. What?

21 Q In your charge, you said that Mr. Roman --

22 A In the EEOC?

23 Q Correct. Yes. Thank you for clarifying. That Mr. Roman  
24 told your prospective employers that you were sleeping with  
25 your boss, that was a false allegation?

1 A Correct, I believe. I don't -- I don't remember that  
2 happening.

3 Q Okay. Paragraph 25 of the complaint says that you were  
4 horrified and embarrassed by those statements, especially  
5 because of the defamatory nature of the claim that you are a  
6 drug addict.

7 A Yes.

8 Q You do smoke marijuana every day, right?

9 A I don't see that as a drug. It's a -- it's a medication,  
10 actually.

11 Q It's not a medication. You don't have a prescription for  
12 it, do you?

13 A Okay.

14 Q Do you?

15 A I do not.

16 Q Right. Okay. You know that you could go get one?

17 MS. SHIKUNOV: Your Honor, at this point, I need to  
18 object.

19 THE WITNESS: I paid for one for my son. They're  
20 pretty expensive.

21 MS. SHIKUNOV: We discussed this at the pretrial  
22 conference.

23 (Simultaneous speaking.)

24 MS. SHIKUNOV: We discussed this at the pretrial  
25 conference. And recreational marijuana is legal in the state

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1 of New Jersey, and I think it is completely inflammatory to be  
2 asking Ms. O'Brien if she's a drug addict on the stand because  
3 she engages in the use of a legal substance.

4 THE COURT: Counselor, if -- if you want to have a  
5 sidebar, we can, but we're not going to discuss this in front  
6 of the jury. Now, I don't think that was the take I got from  
7 the question that -- that the witness is a drug addict. That  
8 wasn't my takeaway. If you rephrase your question, we'll --  
9 we'll make a decision on it.

10 MS. DIBIANCA: I can just move on.

11 BY MS. DIBIANCA:

12 Q You -- you've not sought to get a medical marijuana card,  
13 have you, Ms. O'Brien?

14 A I paid for one for my son.

15 Q But you didn't pay for one for yourself?

16 A No.

17 Q Okay. Your interview at the Kimmel Center was on October  
18 29th, 2019, correct?

19 A Okay.

20 Q At that time, Ms. O'Brien, you had not yet filed suit  
21 against the forum, had you?

22 A No.

23 Q But you had filed your charge, correct? The first charge  
24 of discrimination with the EEOC, you had filed it at that time?

25 A I believe so, yes.

1 Q Okay. Did Mr. Ebert know -- when he called the Kimmel  
2 Center on October 29th, 2019, did Mr. Ebert know that you were  
3 -- you had filed a charge against the forum and were planning  
4 to sue the forum?

5 MS. SHIKUNOV: Your Honor, I'm going to object. That  
6 calls for speculation. This witness can't discuss what Mr.  
7 Ebert knew or did not know.

8 THE COURT: If the witness knows -

9 THE WITNESS: I didn't tell him specifically anything  
10 that was going on.

11 BY MS. DIBIANCA:

12 Q The night of the interview on October 29, 2019, Mr. David  
13 Beatty, the recruiter, or person with PeopleShare, called you  
14 and told you that you did not get the Kimmel Center job because  
15 of your poor interview performance, correct?

16 A Correct.

17 Q Okay. He specifically told you during that call that the  
18 anonymous phone call was not the reason you did not get the job  
19 with the Kimmel Center, right?

20 A Correct.

21 Q Okay. Ms. O'Brien, last week there was some talk about  
22 counterclaims that my clients filed in their answer, along with  
23 the counterclaim that we're describing as the second lawsuit,  
24 and that they subsequently withdraw. Do you remember that  
25 testimony?

1 A Yes.

2 Q Okay. And you said that Mr. Roman, my client, had filed  
3 four counterclaims but withdrew three of them, correct?

4 A Correct.

5 Q Okay. The one counterclaim that remains is for the abuse  
6 of process, which we just finished discussing, correct?

7 A Correct.

8 Q Okay. You recall, don't you, that the other three  
9 counterclaims were claims against Mr. Ebert, correct?

10 A I don't recall. There was so many.

11 Q Do you recall that Mr. Ebert was a named defendant in the  
12 counterclaims?

13 A Yes.

14 Q Yeah. And that those counterclaims had to be dropped  
15 because Mr. Ebert filed for bankruptcy, correct?

16 A Okay.

17 Q And that my clients cannot pursue a claim against an  
18 individual whose debts have been discharged in bankruptcy.

19 A Okay.

20 Q Okay. We've talked about Mr. Ebert's anonymous call to  
21 the Kimmel Center, but that was not the only anonymous call he  
22 made; was it?

23 A No.

24 Q Okay. He also -- well, you tell me. Who did -- who else  
25 did Mr. Ebert call anonymously, Ms. O'Brien?

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1 A Mr. Roman.

2 Q Mr. Roman. Do you know how many calls he made to  
3 Mr. Roman?

4 A I do not.

5 Q You knew it was several, though, right?

6 A I knew it was several.

7 Q Okay. Do you know that he called you before and after  
8 each time he called Mr. Roman?

9 A No.

10 Q You weren't aware of that?

11 A No. No.

12 Q Okay. All of the calls that Mr. Ebert made to Mr. Roman  
13 anonymously he did from a -- called from a blocked number,  
14 correct?

15 A Okay. Yes.

16 Q Okay. And when you -- your witness -- your expert was on  
17 the stand today, she testified that you had real distress about  
18 receiving a call from a blocked number. Does your boyfriend  
19 call you from a blocked number sometimes?

20 A No.

21 Q No?

22 A No.

23 Q But you know that he called Mr. Roman numerous times from  
24 a blocked number, right?

25 A I forgot about that.

1 Q Okay.

2 A I mean, I didn't -- it wasn't on the top of my mind. That  
3 wasn't why the number made me nervous.

4 Q Okay. Has Mr. Roman ever called you since this litigation  
5 began?

6 A No.

7 Q No? Okay. And this has been going on two, three years,  
8 right?

9 A Correct.

10 Q Okay. September 25, 2019, Mr. Roman actually answered  
11 your boyfriend's phone call from the blocked number. You're  
12 aware of that, right?

13 A Was that the only time he ever answered?

14 Q I don't know, but I'm asking you if you're aware of the  
15 September 25th time.

16 A How would --

17 Q You've heard the phone call.

18 A Right.

19 Q The phone call was reported; wasn't it?

20 A Right. My understanding was that they spoke more than  
21 once, I thought.

22 Q Okay. Are you aware of a phone call that was recorded  
23 from Mr. Ebert to Mr. Roman?

24 A Yes. Yes.

25 Q Okay.



1 A Yes. I thought they had spoken more than one time,  
2 though.

3 Q But the one that's recorded is September --

4 A There's only one recording.

5 Q Okay.

6 A Right?

7 Q That I --

8 A That we all know?

9 Q Okay. Mr. Ebert is not currently employed; is he?

10 A He is retired.

11 Q Okay. He is a former police officer?

12 A Correct.

13 Q Undercover, right?

14 A Yep.

15 Q So Mr. Ebert has some experience in undercover work,  
16 correct?

17 A Yes.

18 Q He has some experience in keeping secrets, correct?

19 A Okay.

20 MS. SHIKUNOV: I'm going to object to that question,  
21 Your Honor.

22 THE COURT: Grounds?

23 MS. SHIKUNOV: I don't understand how it's relevant,  
24 that he used to be an undercover cop, and she is asking if he  
25 has experience keeping secrets.

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1 THE COURT: Do you want to make an offer on that,  
2 counsel?

3 MS. DIBIANCA: Certainly, Your Honor. We're going to  
4 talk about the recording of the call. Maybe that will explain  
5 it. I can just move right to the recording, if you'd like.

6 THE COURT: Let's do that.

7 MS. DIBIANCA: Okay.

8 BY MS. DIBIANCA:

9 Q Ms. O'Brien, you counsel may have already told you this,  
10 but what I'm going to play is not the complete call. Some  
11 excerpts have been removed. The parties have agreed to that in  
12 advance, so I just want to be clear you're not going to hear  
13 the whole call. It's going to be portions of the call.

14 MS. DIBIANCA: Exhibit 119.

15 (Audio played.)

16 BY MS. DIBIANCA:

17 Q Just to confirm the voices, who are you hearing on that  
18 tape?

19 A Greg and -- Mr. Ebert and Mr. Roman.

20 MS. DIBIANCA: Okay. Go ahead and resume, please.

21 (Audio played.)

22 BY MS. DIBIANCA:

23 Q That was your boyfriend's voice, right?

24 A Correct.

25 MS. DIBIANCA: Just because there are two male

O'BRIEN-251

1 speakers, so I want to make sure everyone understands who is  
2 speaking. Go right ahead.

3 (Audio played.)

4 BY MS. DIBIANCA:

5 Q Ms. O'Brien, your boyfriend told Mr. Roman on that call --  
6 he noted that Mr. Roman had been on work leave for some months,  
7 correct?

8 A Yes.

9 Q And Mr. Roman had, in fact, been out of the office  
10 following that November 1st --

11 A Yes.

12 Q So by September 2019 when this call occurred, Mr. Roman  
13 had, in fact, been -- my words -- exiled from the office for 10  
14 months, right?

15 A Yes.

16 Q Okay. Mr. Ebert also said that the main boss of the Forum  
17 came in once a week, and the main boss was Dr. Pipes, correct?

18 A Yes.

19 Q And Dr. Pipes did come into the office once a week,  
20 correct?

21 A Yes.

22 Q Okay. And Mr. Ebert said during that call that there were  
23 four or five women who were going to sue the Forum, correct?

24 A Yes.

25 Q And you and three or four other women did in fact sue the

1 Forum.

2 A Correct.

3 Q Correct. And we're going to hear from those other  
4 witnesses -- Ms. Barbounis, Ms. McNulty, and Ms. Brady,  
5 correct?

6 A Correct.

7 Q And they're all represented by the same lawyer, right?

8 A Yes.

9 Q Okay. And that lawyer is with the same firm that Ms.  
10 Shikunov is with, correct?

11 A Now.

12 Q Correct.

13 A Ms. Shikunov was not with that firm when I went and spoke  
14 with her.

15 Q Okay. Mr. Ebert, during the call, talked about a woman  
16 down in D.C., correct?

17 A Correct.

18 Q And at the time of this call, Ms. Barbounis was living in  
19 D.C., correct?

20 A She was, yes.

21 Q Yeah. Okay. Mr. Ebert said that the woman in D.C. was,  
22 quote, "the one who got the ball rolling with the suit,"  
23 correct?

24 A That's what he said.

25 Q Yeah. And you know that Lisa Barbounis was in fact the

1 first of the women to file a suit, correct?

2 A Okay. Yes.

3 Q Okay. So far, has anything that I've mentioned that  
4 Mr. Ebert said during that call been untruthful?

5 A No.

6 Q Okay. It has all been accurate, correct?

7 A Yes.

8 Q Okay. Mr. Ebert said that, quote, "Everyone jumped in the  
9 suit because of her," and by "her" he was referring to the  
10 woman in D.C., right?

11 A That's what he said.

12 Q That's what he said. And you know that Lisa Barbounis was  
13 the first to retain a lawyer, and then the other women,  
14 yourself excluded, also retained that same lawyer, right?

15 A I believe that I actually retained my lawyer first.

16 Q The other women, though.

17 A Excuse me?

18 Q Ms. Barbounis, Ms. Brady, and Ms. McNulty. Ms. Barbounis  
19 was the first to engage her lawyer.

20 A Okay.

21 Q Okay? And the other two followed --

22 A Followed her.

23 Q Right. Okay. Mr. Ebert also said during the call that,  
24 quote, "The one woman that left, or she is just leaving in the  
25 next month, actually, joined in the suit and made up just to

1 cash in." Do you remember him saying that?

2 A I heard him say that, yes.

3 Q Okay. And the woman who was leaving the Forum in the next  
4 months, October 2019, that was Ms. Brady, correct?

5 A I'm not sure. I'm not sure who left when, but it could  
6 be.

7 Q Okay. And did Ms. Brady join the suit just to cash in,  
8 Ms. O'Brien?

9 A I don't believe so, no.

10 Q Ms. O'Brien, did you tell Mr. Ebert about the women and  
11 their lawsuits?

12 A I did not. I -- when -- I think when those -- can you  
13 tell me when those calls were made?

14 Q That one was September 25 --

15 A That was --

16 Q -- 2019.

17 A September? So we had just been dating since May. I  
18 didn't -- I didn't give him all of the information. But as --  
19 the longer that we dated, I did have calls from friends that I  
20 confided in, and, you know, he may have heard some stuff there.

21 Q So he just pieced together pieces of information he heard  
22 from you on the phone?

23 A With stuff that he knew, like he knew that I didn't go  
24 into the office every day. We had work flexibility because  
25 Daniel allowed that.

1 Q He didn't say that on that call; did he?

2 A He did. He said we were never in the office, and it was  
3 like we were, you know, coming and going as we pleased.

4 Q Okay.

5 A So those things that he said like that, that he probably  
6 knew, that I didn't go into the office every day.

7 Q How did he know about Mr. Roman being on work leave, that  
8 Daniel Pipes came into the office once a week, that  
9 Ms. Barbounis was down in D.C., and that Ms. Barbounis was the  
10 one who got the ball rolling?

11 A I don't know how he knew. That's what I'm telling you. I  
12 was talking to my friends on the phone, and they would ask me  
13 stuff about it. And most of the times I would try to go get  
14 some privacy, but he may have heard some stuff.

15 Q You testified last week that you worried that Mr. --  
16 actually, you testified to it today, I believe, that Mr. Roman  
17 -- you were worried he was hacking your personal phone, right?

18 A I was -- yes. I still worry about it, actually.

19 Q Okay. And Mr. -- you testified Mr. Ebert does have a  
20 background in undercover and surveillance work, right?

21 A Correct.

22 Q Okay. Did it ever occur to you, Ms. O'Brien, that your  
23 boyfriend who has experience in covert surveillance as an  
24 undercover cop may have been the one surveilling your phone?

25 A No.

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1 Q No? Okay. Did it ever occur to you that Mr. Ebert was  
2 listening to your private conversations with your co-workers  
3 and that he knew the information that he conducted -- that he  
4 conveyed to Mr. Roman as a result of his covert surveillance on  
5 you?

6 A No.

7 Q Okay. Did you bring your boyfriend, Mr. Ebert, into the  
8 MEF office on the evening of June 29, 2019, to conduct  
9 surveillance?

10 A Not surveillance. I asked him to look to see if there was  
11 a video camera in my office because I was paranoid that Greg  
12 was -- had put cameras in our office.

13 Q Okay. You didn't have him look just in your office,  
14 though; did you?

15 A I had him look above Greg's desk because that's where he  
16 had the camera pointed that would go off when you walked into  
17 the room.

18 Q You had him look --

19 A So I thought that --

20 Q -- throughout the office?

21 A I'm sorry. What?

22 Q Did you have Mr. Ebert look throughout the office?

23 A Not throughout the office. Above the desks of the women  
24 and above Greg's.

25 Q Okay. Dr. Pipes had no idea --



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1 A No.

2 Q -- that you brought your boyfriend into their highly  
3 secure work environment --

4 A No.

5 Q -- to look around.

6 A No.

7 Q Right.

8 A I did have him sign an NDA, though.

9 Q An NDA that you never gave to anybody.

10 A I filed it.

11 Q But --

12 A With the rest of them. That's what I usually did. That's  
13 exactly what I did. I never gave them anybody's.

14 Q Ms. O'Brien, did your --

15 A I would have a signed --

16 Q -- boyfriend have a legitimate business reason to be in  
17 the offices?

18 A No.

19 Q No. Okay.

20 MS. DIBIANCA: I have no further questions, Your  
21 Honor.

22 THE COURT: All right. Can we have a brief sidebar,  
23 please?

24 (Whereupon, sidebar conversation begins.)

25 THE COURT: Can you hear us, Christine? Christine,

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1 can you hear us?

2 DEPUTY STEIN: Yes.

3 THE COURT: We're going to continue to the redirect,  
4 okay, and we're going to see how long this takes. I'm not  
5 sure. I do -- I'm giving this some more thought about the  
6 discussion about we -- and if there is an instruction -- I know  
7 that the cross-examination was focused

1 on the complaint, the second complaint, and that's part of  
2 your crossclaim.

3 And that the testimony, as I understand it, or at  
4 least as it -- as that complaint alleges -- you know, that  
5 complaint was filed by the Plaintiff.

6 An anonymous caller reached out to a prospective  
7 employee, said bad things, including that she was a drug user.

8 I don't want the jury left with the impression -- I mean, that  
9 -- first of all, I don't -- I don't think it's supported by --  
10 at least by the evidence that I have that this -- that this  
11 Plaintiff is a drug addict.

12 And I'm wondering if the -- through the objection and  
13 me moving -- moving us on from there, if we created some  
14 impression that you are concerned with that we should cure on  
15 the record, or perhaps it's better not even to get into it  
16 anymore, or is it something you want to deal with on redirect?

17 MS. SHIKUNOV: I mean, if I just ask her if she's a  
18 drug addict, she's going to say no. I just -- you basically  
19 implied that she was. A drug addict is also going to say that  
20 they're not a drug addict on the stand.

21 THE COURT: But it -- this is the line that has  
22 gotten fuzzy here. The complaint that she filed that is the  
23 subject of the -- of the crossclaim is where the suggestion of  
24 the drug addict came out. But I'm just wondering, in  
25 discussing it, do we -- I don't want to leave the jury with the

1 impression other than what she said. She uses marijuana  
2 recreationally or what she -- what she had discussed about  
3 marijuana use in terms of the expert's opinion that we received  
4 today.

5 I just -- I'm asking counsel, so do we -- you know,  
6 is there a -- is there an instruction you'd like to give? Is  
7 there a way that we --

8 MS. DIBIANCA: I would prefer an instruction I think  
9 probably just that -- I don't even know how to put it together  
10 on the fly. I'm sorry. I'm like trying to --

11 MS. SHIKUNOV: Your Honor, I think it, honestly, just  
12 attracts more attention to it.

13 THE COURT: Which crossed my mind as well. And maybe  
14 I'm the only one who -- who picked it up.

15 Again, it's -- the complaint itself is going to be in  
16 evidence, and this may be -- maybe this gets fixed through  
17 redirect, and when they finally meet Ebert, et cetera, that  
18 when he -- is that we anticipate Ebert is going to say, "I'm  
19 the one who said that, and I made it all up anyway."

20 But I'm just asking -- and assuming we get through  
21 this witness today, if you want to, you know, sleep on an  
22 instruction and suggest something --

23 MS. SHIKUNOV: Can I do that?

24 THE COURT: -- in the morning, I think that's fair.  
25 And I may -- I may be overthinking it.

1 MS. DIBIANCA: Right.

2 THE COURT: I just -- and it may be a strategy call  
3 that you -- that you --

4 MS. SHIKUNOV: I know. I just -- I'd like to chew on  
5 that.

6 THE COURT: How long do you think --

7 MS. SHIKUNOV: I can tell you how long I would like  
8 it to take, and then I can tell you how long I think that my  
9 witness will take to answer the questions that I'm going to  
10 ask. So, I mean, I have about three and a half pages of  
11 questions.

12 THE COURT: That's not bad. That's not bad. I'd  
13 like to give it a shot, even if we have --

14 MS. DIBIANCA: That's my --

15 MS. SHIKUNOV: I would like to (inaudible) here, and  
16 I'll just know -- and I'll do my best either way. But  
17 questions that are inconsequential, if I could lead her a  
18 little bit, I could get through it a lost foster.

19 MS. DIBIANCA: Yeah, yeah. I gave you a lot of  
20 leeway last week.

21 MS. SHIKUNOV: And so if Your Honor is going to allow  
22 me some latitude --

23 THE COURT: We did that this morning as well with the  
24 expert, too. I'm fine with that.

25 MS. SHIKUNOV: Okay.

O'BRIEN-262

1           THE COURT: And, again, maybe that's a way you -- if  
2   you -- whatever you think is best, Erica, but maybe that's the  
3   way to --

4           MS. SHIKUNOV: Yeah. No problem.

5           THE COURT: -- maybe make your own instruction on the  
6   lead, if you want. You know, you can -- you can have leeway,  
7   if you want to clarify that, sort of like what you were doing  
8   with your objection, if you want to make that part of your  
9   examination, too.

10          MS. SHIKUNOV: Okay.

11          THE COURT: All right? All right, guys. We're going  
12   to give it a shot.

13          MS. DIBIANCA: Thanks.

14          MS. SHIKUNOV: Thank you.

15          THE COURT: Thank you.

16          (Whereupon, the sidebar conversation ends.)

17          THE COURT: Folks, we're going to move on to the  
18   redirect at this point. I do have an eye on the clock. I know  
19   it's getting to be a bit of a long day. But if we have a shot  
20   at getting the testimony of this witness completed today, I'd  
21   like to take it. Okay?

22                 So we'll get started right now on the redirect.

23   Thank you so much.

24   REDIRECT EXAMINATION

25   BY MS. SHIKUNOV:

O'BRIEN-263

1 Q Ms. O'Brien, you were asked some questions on cross-exam  
2 about alleged drug use. Other than your prescribed ADHD  
3 medication and marijuana, which is legal in the State of New  
4 Jersey, do you use any other drugs?

5 A No.

6 Q Have you ever used any other drugs?

7 A No.

8 Q Do you have any addiction issues with marijuana?

9 A No.

10 Q Have you smoked marijuana at all this week since you've  
11 been in the hotel?

12 A No.

13 MS. SHIKUNOV: Could you please bring up the  
14 counterclaim, Patricia? And if you could scroll down to the  
15 counterclaim?

16 BY MS. SHIKUNOV:

17 Q Ms. O'Brien, you were asked some questions on cross-exam  
18 about whether or not the three counterclaims against you that  
19 have since been dropped were only against Mr. Ebert. That's  
20 not true, correct?

21 A No.

22 MS. SHIKUNOV: Scroll back up to the first  
23 counterclaim, please, Patricia.

24 BY MS. SHIKUNOV:

25 Q Count 1 says it's against O'Brien and Ebert, correct?

1 A Yes.

2 MS. SHIKUNOV: All right. Could you scroll to the  
3 second count, please?

4 BY MS. SHIKUNOV:

5 Q The second count says it's against you, correct?

6 A Correct.

7 Q There is a second count, too, that says it's against  
8 Ebert, correct?

9 A Correct.

10 MS. SHIKUNOV: And then can you scroll down to the  
11 last one, please, Patricia?

12 BY MS. SHIKUNOV:

13 Q That one also says it's against you, correct?

14 A Correct.

15 Q Okay.

16 MS. SHIKUNOV: Patricia, could you please bring up  
17 the text messages, starting with DX 48.

18 BY MS. SHIKUNOV:

19 Q Ms. O'Brien, you were asked some questions about text  
20 messages that you exchanged on October 31st of 2018 with Lisa  
21 Barbounis. Do you remember exchanging those text messages?

22 A Yes.

23 Q So we're going to start at 48, because they were taken out  
24 of context when you were asked questions about them, and I'd  
25 like to go through them in the order they were exchanged, okay?



1 A Okay.

2 MS. SHIKUNOV: So I'm just going to read through  
3 them, and I'd ask, Patricia, that you follow along with me.  
4 And if I'm reading them incorrectly, let me know, okay?

5 THE WITNESS: Okay.

6 BY MS. SHIKUNOV:

7 Q The first one is from you to Lisa. It says, "They are  
8 going to ask what we talked about, like our similar  
9 personalities, how we need to respect each other's space,  
10 drawing lines between responsibilities, and how we don't want  
11 to get emotional in the office anymore, and so we can work  
12 better together." Did I read that correctly?

13 A Yes.

14 Q Your response -- or her response, excuse me, was "yes."

15 A Yes.

16 Q Correct? And she wrote to you again and wrote to all of  
17 that.

18 A Correct.

19 Q You replied, "Good," smiley face.

20 A Correct.

21 Q You text her, "Just got off the phone. You and I have no  
22 choice but to trust each other."

23 A Correct.

24 Q She texts you, "I do not like being paranoid."

25 A Yes.

1 Q She texts you again, "Feel free to come look at what I  
2 wrote."

3 A Yes.

4 Q Was that referring to the complaint she filed against you?

5 A Yes.

6 Q She writes to you, "If you're so shitty" -- or, excuse me,  
7 "It's so shitty not to trust everyone," correct?

8 A Yes.

9 Q You write, "He called me. He is going to angle. He told  
10 me he is going to squash a meeting with Mark. Do it, and we  
11 will talk later."

12 You write to her, "We both need to be model employees  
13 right now."

14 She writes to you, "I can't even be more paranoid."

15 You write, "We need to steer clear of each other around  
16 everyone else. I believe you. They need to think we are at  
17 odds, though. They are trying to pit us against each other,  
18 probably to get rid of us both."

19 She writes back, "If this place doesn't honor transparency  
20 and truth, then it's not worth it to me. I'd rather be broke  
21 than a scumbag rat."

22 She writes to you again, "It's so sad that I trust no one,  
23 and I love the mission. Come out stronger."

24 You write, "LOL. We need to play our cards together, so  
25 we can get out and not be broke or scumbags."

O'BRIEN-267

1           You write, "You can trust me. I'm going to trust you with  
2 mine. I will not fuck you over."

3           She writes back, "Deal."

4           You write, "We just need to be smart, and no one else can  
5 know that we have each other's backs."

6           She writes back, "Yes."

7           You write, "Hey, call me when you're out of there, but  
8 don't let it interfere with your Halloween and your kids,  
9 because it's supposed to be the best night ever. But  
10 definitely call me. And if you text me, make sure you're  
11 texting me, because I almost texted him with something I was  
12 saying to you. LOL."

13          She writes, "The minute I walk out the door."

14          You write, "I am a couple glasses in, but I would like to  
15 talk to you before tomorrow."

16          She writes, "I'm so sick to my stomach, but I appreciate  
17 you talking to me."

18          She writes again, "I almost" -- or "I deleted most. This  
19 is from Vasselly's phones. The one Tricia has are worse. I  
20 don't even know if he can ask her for them."

21          She is referring to text messages, correct?

22   A       Correct.

23   Q       You write, "Figure out what you want to do. I think if  
24 you ask her to screenshot them and give them to you, she would.  
25 I figured he went through my stuff. Matt is in the wrong. I

1 brought Katrina to him. I don't know all if this -- when I  
2 did."

3 What did you mean by that?

4 A I didn't know all of this when --

5 Q You didn't know all of --

6 A When I brought Katrina --

7 Q -- this. Okay.

8 A When I brought Katrina in.

9 Q You write, "This is DP's life work. I don't think he  
10 would blindly fire someone/two someones."

11 She writes, "I'm trying to gather my stuff. I told my old  
12 work friend about it."

13 She writes again, "That's what I thought. I thought no  
14 fucking way am I telling her she is with him and spies for  
15 him."

16 Is she referring to you?

17 A No.

18 Q Who is she referring to? Or if you don't know, you can  
19 say you don't know.

20 A I don't think I know.

21 Q She writes, "100 percent, that's what I thought."

22 You write, "I take my job seriously. He hired me, but I  
23 work for MEF. He gave me HR responsibilities, and I look out  
24 for MEF, and I look out for our people."

25 You write again, "Honestly, I figured you would. I think

1 you should consult your people and see how they guide you. I  
2 think together we could have an impact with DP. I'd like to  
3 look out for MEF, but I'm in your corner. In the meantime, I  
4 will be looking to cover my ass. Apparently, I am going to  
5 need a new job. Ugh. So disappointing. I really think DP and  
6 Mark would hear us if we went together and spoke from the  
7 heart, but I am in your corner."

8 She writes, "Thank you, but that's the whole thing. I  
9 don't want a new job. I just want this one to be normal. If  
10 we do that, do you think they would fire us?"

11 She is referring to filing a complaint, correct?

12 A Correct.

13 Q You write the next morning, "I'm on my way in. Call when  
14 you can."

15 Then you write, "I'm handwriting it, and I feel like I'm  
16 going to take a picture of it and send it to D and MS Gmail  
17 accounts. It's long and I'm two pages in. I wish I could  
18 type. LOL. I will send it to you." Or, whoops, "I will send  
19 to you, too."

20 She writes, "That's what we do. I come to you. You  
21 document. If they don't respond appropriately, then attorney."

22 You write, "I'm writing up a timeline right now, pen and  
23 paper, because I'm afraid to do it on my computer."

24 Then you write, "The die is cast. I'm pretty sure we can  
25 talk to each other now. Who cares what they think" -- or

1 "they'll think." I'm assuming you meant "they," ma'am?

2 A Mm-hmm.

3 Q "While the shit is hitting the fan, let's talk a walk and  
4 I'll show you the email and the telegram."

5 Then you write, "Lay low 'til Stacey leaves."

6 You're referring to Stacey Roman?

7 A Yes.

8 Q She was in the office?

9 A Yes.

10 Q And that's Greg's sister.

11 A Yes.

12 Q "Or let's take a walk."

13 She writes, "He's telling Greg what we all said and doing  
14 nothing but letting him know there is a problem."

15 Then she writes, "We all still have to work for him."

16 Then you write, "I think they have to keep him for face  
17 value." Do you mean "for face value"?

18 A For face value, yeah.

19 Q "But if he retains even a miniscule amount of authority or  
20 power, I am walking. I do not want to have to deal" -- or "I  
21 will not deal with him for another minute."

22 And then a week later you write, "I like the way Daniel  
23 operates."

24 There is no other text messages with this one. Do you  
25 even know what you were talking about when you sent this,

1 ma'am?

2 A Unh-unh.

3 Q You were asked questions about why you delayed reporting,  
4 and you answered that you had a few of reporting.

5 Specifically, I'm going to start with the Misconduct incident.

6 Tiffany Lee, Laura Frank, and Lara Zott, were they terminated  
7 before or after the Misconduct incident?

8 A Before.

9 Q With regard to AIPAC, why did you delay reporting that or  
10 bringing that up?

11 A I was afraid, and no one said anything to me. Everyone  
12 was trying to be friendly and keep a good work atmosphere.

13 And, again, I thought it was those -- one of those creepy  
14 moments that he had, and it was a poor choice, and if nobody  
15 was complaining, I wasn't going to rock the boat because I was  
16 afraid to.

17 Q Why didn't you include the APIAC event in the write-up  
18 when -- the five-page handwritten write-up that you wrote?

19 A It was five pages. I was exhausted, and I was trying to  
20 just give them a time -- I felt like I had to explain the fight  
21 at that point, too. So it was really more just around that  
22 stuff.

23 Q With regard to the investigation that was conducted  
24 afterwards, was the AIPAC event reported to Dr. Pipes?

25 A Yes.

O'BRIEN-272

1 Q Ma'am, you're HR, and there was a major report of sexual  
2 harassment that was made to Dr. Pipes. Were you included at  
3 any point in the investigation after the report was made?

4 A No.

5 Q Were there any females included in the investigation when  
6 the report was made?

7 A No.

8 Q You indicated that the morning of the report being made  
9 that Mr. Fink was going to come in to investigate Lisa's  
10 complaint against you.

11 A Right. Yes.

12 Q Okay. Was Mr. Fink brought in to investigate the claims  
13 of sexual harassment when Daniel Pipes was conducting  
14 interviews around the office?

15 A No. He came in by himself.

16 Q Okay. And when did he come in?

17 A That day. We had sent --

18 Q When you're thinking -- I'm sorry. Dr. Pipes.

19 A Dr. Pipes came in the day --

20 Q So, I'm sorry, maybe I asked the question in a confusing  
21 way. Did Mr. Fink ever come in?

22 A He came in to the meeting that they had called.

23 Q Okay. And was he there in person or on the phone?

24 A The first one I think he was in person. The second one he  
25 was on the phone.



O'BRIEN-273

1 Q Did Mr. Fink ever ask you any questions?

2 A No.

3 Q Did he ever take it -- did he ever participate in the  
4 interview?

5 A No.

6 Q When Dr. Pipes interviewed you, did he take any notes?

7 A No.

8 Q Did he notify you of any conclusions regarding his  
9 investigation?

10 A No.

11 Q Namely, I'm asking you if he made a determination whether  
12 Greg did these things or not.

13 A No.

14 MS. SHIKUNOV: Okay. And could you pull up that 2015  
15 sexual harassment policy, please, Patricia, and go to the  
16 sexual harassment section? Next page.

17 BY MS. SHIKUNOV:

18 Q One second. I'm trying to find the correct page I wanted  
19 to ask you a question about.

20 Okay. So with regard to the reporting and investigation  
21 section, you were asked some questions about that. Looking at  
22 the first word of the third line from the bottom it reads, "The  
23 MEF will promptly, appropriately, and with as much  
24 confidentiality as possible, investigate any reports of  
25 offensive conduct," correct?

1 A Correct.

2 Q You were invited to a staff meeting where Mr. Roman's  
3 sister was present?

4 A Yes.

5 Q Where his college buddy was present?

6 A Yes.

7 Q And where Mr. Fink was present?

8 A Yes.

9 Q And you were asked to discuss these complaints out in the  
10 open at this meeting, correct?

11 A Correct.

12 Q You were asked some questions on direct exam about the  
13 women in the Forum not trusting you. Do you have an  
14 understanding about why other women who worked for The Middle  
15 East Forum didn't trust you?

16 A Yes.

17 Q And what is that?

18 A Because I was HR, and Greg would promote us as like we're  
19 like best friends, we're like a team, and then everyone didn't  
20 trust me to -- to talk to me.

21 Q You were asked some questions about going to Atlantic City  
22 or the shore -- I might be imposing Atlantic City, I don't  
23 recall, so forgive me -- with your colleagues the summer of  
24 2019. Do you remember being asked those questions?

25 A Yes.

1 Q Was Mr. Ebert there with you for the weekend?

2 A No. He went home.

3 Q Okay.

4 A After he checked us in and dropped us at the liquor -- or  
5 took us to the liquor store.

6 Q Other than -- and I believe you testified to this last  
7 week. Other than meeting Ms. Brady during that check-in and  
8 subsequent trip to the liquor store, and Ms. Barbounis for  
9 about five minutes in a bar, did he ever meet any of these  
10 other women?

11 A No.

12 Q Did he ever meet Tricia McNulty?

13 A No.

14 Q Did he ever meet Delaney Onchek?

15 A No.

16 Q You were asked a lot of questions about you and Mr. Roman  
17 being friends. When were you friendly with Mr. Roman while you  
18 worked at the MEF?

19 A At the beginning more. I was, you know, trying to be a  
20 good friend, have a good relationship with my boss.

21 Q Were you comfortable when he asked you personal questions  
22 about your divorce?

23 A No.

24 Q What about with regard to your dating life or  
25 relationships?

1 A Not comfortable.

2 Q You were asked questions about if you ever got drinks with  
3 Greg Roman again after Misconduct. Did you ever go with him  
4 alone after Misconduct?

5 A No.

6 Q You were asked questions at the AIPAC conference about  
7 staying at the Airbnb. Why did you stay at the Airbnb?

8 A We had been drinking. It was later, and we were going to  
9 get an Uber and Greg pushed, and he's loud and he's the boss  
10 and he said, "No, you guys stay here."

11 Q Okay. And I apologize for jumping around, and I hope that  
12 you're keeping -- I'm going quick. I'm trying to get these  
13 folks out of here, so stay with me.

14 With regard to the evening at Misconduct, why did you feel  
15 like you need to explain to Mr. Roman that you weren't going to  
16 fuck him that night?

17 A Because he kept suggesting we go back to the office,  
18 because he kept talking about personal things, because he had  
19 talked about needing a release.

20 Q And, actually, I'm glad you said that. So with regard to  
21 the language of needing a release, you were asked some  
22 questions about that on cross-exam. That first charge you  
23 filed was -- stated what happened that evening generally,  
24 correct?

25 A Correct.

O'BRIEN-277

1 Q And it read specifically, "Discuss various and appropriate  
2 topics unrelated to work, specifically, sex, relationships, and  
3 current problems he was having with his wife. He continuously  
4 mentioned he forgot papers at the office and continued to make  
5 advances at dinner," correct?

6 A Correct.

7 Q You didn't directly quote any of the specific remarks he  
8 made in that charge; did you?

9 A No.

10 Q Prior to the trip to Israel, Ms. Barbounis worked on  
11 flextime, correct?

12 A Correct.

13 Q And can you explain what you mean by -- what "flextime"  
14 means?

15 A Well, we were able to work from home if we could. We  
16 could -- well, I could log in. Actually, I'm not sure if she  
17 could. But, you know, if you needed to go to something for  
18 your kids for school or a doctor's appointment, you would just  
19 either come in late, work a little later, go in early, leave  
20 early, that type of thing.

21 Q After the trip to Israel, you were directed to document  
22 Lisa for any minor infraction, correct?

23 A Correct.

24 Q So when she filed that complaint against you on  
25 October 30, 2018, would you agree that most of the things she

O'BRIEN-278

1    stated in that complaint about you having it out for her,  
2    disciplining her in particular, were true?

3    A     Yes. I was told to document her.

4    Q     With regard to that write-up she made against you, it was  
5    discussed that Greg told you he could make this go away. What  
6    did you take that to mean?

7    A     I was so nervous at that point. I just was trying to get  
8    through it without him finding out, and I was just -- I just  
9    really was trying to deal with him as little as possible at  
10   that point.

11   Q     Okay. And then you were asked some questions about what  
12   happened after the report in November of 2018. So you were  
13   asked some questions specifically about the rumor about your  
14   sex life that was being spread. Was that, to your  
15   understanding, being spread in the office in the spring of  
16   2019?

17   A     Yes.

18   Q     And did you report that to Dr. Pipes?

19   A     Yes.

20   Q     And was anything done to stop the people that were  
21   currently talking about the rumor from discussing it?

22   A     No. Dr. Pipes said it happened before November 1st, so he  
23   wouldn't be dealing with that.

24   Q     And after you complained about that rumor, you were  
25   ordered to directly work with Mr. Roman on the audit.

1 A Correct.

2 Q And you had to turn your work-product over to Mr. Roman,  
3 correct?

4 A Correct.

5 Q Was your work-product published at that point?

6 A No.

7 Q Why didn't you want to give Mr. Roman unpublished work-  
8 product?

9 A Because I was afraid he would manipulate it. I normally  
10 gave it an Excel sheet, and I did -- and that's how I was  
11 instructed to give it, because it's easier to look at that way.  
12 But you can change anything. I just was afraid for him to  
13 have any access to my work because I was afraid he would  
14 retaliate because he told us over and over and over again that  
15 he would.

16 Q After the -- following the audit and you complaining about  
17 working with him on the audit, you were ordered to work from  
18 home, correct?

19 A That might have been before. It was -- that -- I was  
20 ordered to work from home -- I think I was working from home at  
21 that point.

22 Q During the audit.

23 A Yes.

24 Q Were there employees still working from the office during  
25 the audit?

1 A Yes.

2 Q Who?

3 A The directive was that all full-time administrative  
4 employees would work from home because -- because they were  
5 subletting the office, and so they wanted it to be clean and  
6 neat, and they didn't want anybody in there. So I was the only  
7 full-time employee at that point.

8 Q Were there other employees working from the office?

9 A Yes.

10 Q Who?

11 A Thelma Prosser would go in. She's part-time, and she had  
12 to go in to get the mail, and she would do all of that. And I  
13 was instructed that I could go in and get what I needed.

14 Q Marnie, who was working in the office full-time?

15 A Thelma Prosser, Gary Gamble would work in the office, and  
16 they had hired a new Director of Development, which I don't  
17 think I was aware of at the very beginning when -- when I found  
18 out that he was working from the office.

19 I went in one day to get checks, and he was there, and he  
20 had said that he was -- he was, like, there every day.

21 Q Okay. And is the Director of Development a full-time  
22 position?

23 A Yes.

24 Q And that was a male that was hired into that position?

25 A Yes.



O'BRIEN-281

1 Q And that was a new employee that was hired into that  
2 position.

3 A Yes.

4 Q Did you participate in his onboarding?

5 A No.

6 Q Were you asked to participate in his interview?

7 A No.

8 Q Were you asked to put him in Zenefits or any of the other  
9 more --

10 A I don't recall.

11 Q -- administrative HR?

12 A I don't recall if I had to do that.

13 Q Okay. You were asked some questions about interviewing  
14 for jobs. Did you have a job interview in February of 2021?

15 A The --

16 Q Of this year. Did you have a job interview in February of  
17 this year?

18 A I'm like -- of this year?

19 Q Yes. When you were supposed to go to an IME.

20 A When I was supposed to what?

21 Q Go to an IME. Did you have a job interview?

22 A I don't understand what you said. IMA?

23 Q Did you have a job interview in February of this year,  
24 Marnie?

25 A Yes.

O'BRIEN-282

1 Q Okay. You indicated that you resigned because you felt  
2 pushed out. What did you mean by that?

3 A I was no longer -- like when they were hiring for the new  
4 positions, normally I would take part in the interviews,  
5 reading the resumes. I wasn't included in that anymore. I was  
6 forced to work at home.

7 Q Marnie, after the phone call was made to PeopleShare, did  
8 you ever hear from PeopleShare again?

9 A No.

10 Q With regard to your relationship with Mr. Ebert, is that  
11 still a source of stress for you?

12 A No. I mean, every relationship is stressful occasionally.

13 Q Are you still -- have you been able to largely work  
14 through the phone calls that were made?

15 A Yes.

16 Q You were asked some questions about your damages in this  
17 case. How long would you have been planning to stay at MEF but  
18 for the sexual harassment?

19 A I --

20 MS. DIBIANCA: Your Honor, I'm going to object. It's  
21 beyond the scope.

22 THE COURT: It is.

23 MS. SHIKUNOV: Okay.

24 BY MS. SHIKUNOV:

25 Q You were asked some questions about a PeopleShare document

O'BRIEN-283

1 that you sent allegedly in 2017. Other than it being -- saying  
2 2017 at the top, do you have any reason to believe that you  
3 sent a job application to PeopleShare in 2017?

4 A No.

5 Q Is that possibly a clerical error with the date on the  
6 document?

7 A It could be.

8 Q At the time that you filed the counterclaim, did you  
9 believe Mr. Roman had made that call to the recruiter?

10 A Yes.

11 Q And as soon as you found out that he didn't make that call  
12 to the recruiter, you withdrew that complaint, correct?

13 A Yes.

14 MS. DIBIANCA: I'm going to object again. That's  
15 beyond the scope. I didn't ask about this.

16 MS. SHIKUNOV: She went way into the counterclaim,  
17 Your Honor. I think this is a fair point of inquiry.

18 THE COURT: I'll allow it. I'll allow it.

19 BY MS. SHIKUNOV:

20 Q Did you believe Lisa when she disclosed to you what Greg  
21 did to her in Israel?

22 A Yes.

23 Q Do you still believe her?

24 A Yes.

25 Q Are you and the other women making up these complains

1 about Mr. Roman?

2 A No.

3 Q Are you here today because Greg sexually harassed you and  
4 the other female employees at MEF?

5 A Yes.

6 MS. SHIKUNOV: I don't have any further questions.

7 THE COURT: Attorney Dibianca?

8 MS. DIBIANCA: I have one.

9 THE COURT: Yes. Go ahead.

10 MS. DIBIANCA: If I can see DX30, please.

11 RECROSS-EXAMINATION

12 BY MS. DIBIANCA:

13 Q Ms. O'Brien, you did not -- you did or did not hear a  
14 rumor in the workplace about you after November 1, 2018? You  
15 never heard a rumor -- you never heard a rumor being circulated  
16 after November 1, 2018, correct?

17 A It was being talked about. That rumor was being talked  
18 about.

19 Q I would say that's the same thing as being circulated.  
20 Who was talking about it?

21 A Ms. Barbounis, and Ms. McNulty had said that Mr. Bennett  
22 was talking about it.

23 Q Okay. But not Mr. Roman, the Defendant in this case,  
24 correct?

25 A I don't know what he was talking about.

O'BRIEN-285

1 Q You have no knowledge that -- or even reason to believe  
2 that he was talking about --

3 A I don't know that he was.

4 Q Okay. I'm going to show you DX30. This is an email  
5 exchange between you and Dr. Pipes. He is inquiring about the  
6 rumor. You say here on Wednesday, April 24, 2019, "I have had  
7 minimal interactions with him, Mr. Roman, post-November. If I  
8 think of anything, I'll let you know." Did you ever let him  
9 know any -- any other issues that you had you later thought of?

10 A No.

11 Q No. Okay.

12 MS. DIBIANCA: I have no further questions, Your  
13 Honor.

1 THE COURT: Ms. Shikunov?

2 MS. SHIKUNOV: Nothing on that, Your Honor.

3 THE COURT: Okay. All right.

4 All right. Thank you very much. You may return to  
5 counsel table.

6 (Whereupon, the witness was excused.)

7 THE COURT: That fills out our very busy day, ladies  
8 and gentlemen. And, again, as always, I'm very grateful and  
9 impressed at how attentive you have been from the -- from the  
10 morning until now, 10 minutes after 5:00.

11 MS. SHIKUNOV: Actually, Your Honor, is Ms. O'Brien  
12 permitted to step down?

13 THE COURT: Yeah. I did invite her --

14 MS. SHIKUNOV: Oh, I'm sorry. I missed that.

15 THE COURT: Yeah. I'm sorry, I'm sorry.

16 THE WITNESS: I'm sorry.

17 MS. SHIKUNOV: She was making eyes at me, and I  
18 didn't -- I didn't want to be disrespectful. I'm sorry.

19 THE COURT: So I wish you a good night. We're going  
20 to be back here at 9:30 in the morning unless someone tells me  
21 that that's a problem. Seeing no hands, thank you again. Have  
22 a good evening. Safe home, and we'll be back here before you  
23 know it. Thank you.

24 DEPUTY STEIN: All rise. Court is adjourned.

25 (JURY EXITS COURTROOM.)

1           (Whereupon, the above-entitled matter went off the  
2 record at 5:11 p.m. and resumed at 5:13 p.m.)

3           THE COURT: All right. We're back on the record.

4           Counsel, just a few things, if we can, anything  
5 counsel wants to discuss as well. We finished with Plaintiff  
6 O'Brien's testimony, so I guess I'd ask the Plaintiff, what are  
7 our plans for tomorrow?

8           MS. SHIKUNOV: Your Honor, I have -- I have Ms. Brady  
9 here ready to testify in person. I am going to have Mr. Ebert  
10 here ready to participate in person. Ms. Barbounis, you know,  
11 if we got the tech ready to go, I can be ready to have her on  
12 tomorrow.

13           I have -- I don't know if we can get much -- through  
14 much more than that, but I'll defer to counsel on how long they  
15 think that process will be. That's three witnesses.

16           I can -- I can have Ms. McNulty here tomorrow to be  
17 ready to go. I'm just trying to be courteous to her because  
18 she does have a barely 12-week-old baby that she is taking care  
19 of, so I'm trying to not have her have to stay the night at the  
20 hotel, if I can help it.

21           THE COURT: How far is she roughly from Allentown?

22           PARTICIPANT: She lives in New York

23           MS. SHIKUNOV: She lives in New York.

24           THE COURT: Oh, in New York. Yeah. Just I -- I  
25 don't -- that's a tough one. I don't want to -- those three

1 witnesses may fill the day. But at the same time, I don't want  
2 to send the jury home early, because we did tell them that we  
3 were going to try to move every mountain we could to get this  
4 done by the end of the day on Wednesday.

5 MS. DIBIANCA: Right. And my concern would be that  
6 if we're still in Plaintiff's case in chief by Wednesday  
7 morning, we're --

8 THE COURT: Yeah. That --

9 MS. DIBIANCA: -- we just don't get enough time.

10 THE COURT: Yeah. I think --

11 MS. DIBIANCA: I mean, certainly, if you want to call  
12 her, you know, have her come down first, or whenever she gets  
13 here and put her on --

14 THE COURT: Yeah. Please --

15 MS. DIBIANCA: -- but my strong preference --

16 THE COURT: Please consider that. I think we need to  
17 try to get as many of these witnesses on as possible tomorrow.  
18 And, again, it would be -- we didn't -- there was no wasted  
19 time today, so don't take from what I'm saying a suggestion  
20 that there was, we just want to make sure that we're using  
21 every bit of the jurors' time in the most productive way we  
22 can. Okay?

23 And, again, as Ms. Dibianca said, perhaps because she  
24 has this home situation, Ms. McNulty can be taken in a  
25 different order than had been anticipated.



1 All right? A couple other things that -- if you --  
2 well, first, we still need from counsel -- there were several  
3 proposed jury instructions we're looking for. But that --

4 MS. DIBIANCA: We're working on those, Your Honor.

5 THE COURT: All right. And then, so please see if  
6 you can get that to me. And then, from Plaintiff's side,  
7 consider if there is any instruction you want that -- to follow  
8 the completion of the Plaintiff's testimony, because she was  
9 the last witness for today, so we still have time to do that in  
10 the morning if -- if there is anything you want me to consider.

11 MS. SHIKUNOV: Okay.

12 THE COURT: All right.

13 MS. SHIKUNOV: And then, I suppose this is more of a  
14 question for Ms. Stein, but would we be able to get  
15 Ms. Barbounis on by computer tomorrow?

16 DEPUTY STEIN: We can.

17 MS. SHIKUNOV: Okay. And just procedurally, how is  
18 that going to work? Is she going to show up on each of the  
19 individual jurors' screens?

20 THE COURT: Yes.

21 DEPUTY STEIN: If that's where you want her.

22 MS. SHIKUNOV: I guess what is the alternative, a  
23 huge screen up here?

24 THE COURT: It's a screen like that back there.

25 MS. SHIKUNOV: Yeah. The individuals I think

1 probably would be better. And then, do I remain seated, just  
2 looking in front of --

3 THE COURT: I think you can sit or perhaps right from  
4 the podium, Ms. Stein?

5 DEPUTY STEIN: Wherever you want to be, I can make a  
6 camera appear directly on you.

7 MS. SHIKUNOV: Got it. All right. Thank you.

8 THE COURT: The only thing that will be tricky is the  
9 exhibits.

10 PARTICIPANT: That will be a little tricky.

11 THE COURT: And so we -- it would probably be safest  
12 to make sure that the witness has hard copies of those  
13 exhibits, if that's something you can do.

14 MS. DIBIANCA: We cannot do that on our side. I have  
15 -- we don't know what --

16 THE COURT: Right. Right.

17 MS. SHIKUNOV: Can we email her the exhibits in  
18 advance?

19 MS. DIBIANCA: We can't.

20 THE COURT: No. That's a good point. Do you have a  
21 suggestion?

22 PARTICIPANT: A screen share?

23 MS. DIBIANCA: Is there a share screen?

24 PARTICIPANT: Yeah. A screen share function of this?  
25 I mean, are you using Zoom? Webex? What's the platform?

1           PARTICIPANT: The screen share function is the part  
2 that we were having a little bit of a problem with. If we are  
3 -- and I don't know how it would work with a remote camera,  
4 what would we -- a remote camera might not be a great option  
5 either. That's something I will have to tweak in the morning  
6 once they're back.

7           THE COURT: All right. We're not sure if it will  
8 work, the screen share. We did do this a number of times  
9 during the heavier pandemic months, and usually -- almost every  
10 time it worked.

11           MS. SHIKUNOV: Could I make a suggestion? Maybe as a  
12 backup, if we could provide to her electronically like a  
13 Dropbox lens with all of the exhibits, and then counsel -- then  
14 she at least has them electronically. And if counsel needs to  
15 refer to an exhibit, maybe that would be -- because then you  
16 don't have to say ahead of time what you're pointing her to or  
17 whatever. She will just have all of the exhibits in the case.

18  
19           I'm just trying to brainstorm. If that's a bad idea,  
20 I will --

21           PARTICIPANT: Judge, if I may?

22           MS. SHIKUNOV: -- zip it.

23           PARTICIPANT: My recollection is that if we're  
24 showing an exhibit, we would no longer be able to see her, and  
25 she would no longer be able to see us. But we would still be

1 connected by audio.

2 THE COURT: Okay.

3 PARTICIPANT: So I don't know if that would be -- if  
4 that's the way it goes, is that --

5 MS. DIBIANCA: Well, it is a little bit of a concern.  
6 She was -- during her deposition, which was conducted by --  
7 via Zoom, there was some real concern about who she was  
8 communicating with during that deposition.

9 THE COURT: Well, we can -- we can, in a general way,  
10 non-accusatory way --

11 MS. DIBIANCA: Yep.

12 THE COURT: -- reminder her that she can't -- cannot  
13 be -- she cannot be communicating with anybody. The sequester  
14 order applies to all witnesses, whether they're live or video.

15 Well, I -- our IT folks are located in Philadelphia,  
16 but they -- they really do a terrific job, and this time we'll  
17 be talking to them in the morning early before we get together,  
18 and maybe then we can see whether any of these challenges still  
19 remain.

20 PARTICIPANT: Do we -- are we thinking this will be  
21 the first witness? Because another time I heard we were  
22 (inaudible).

23 MS. DIBIANCA: She is not going to be your first  
24 witness; is she?

25 MS. SHIKUNOV: I just don't think it's practical to

1 have her --

2 MS. DIBIANCA: Right. Agreed.

3 MS. SHIKUNOV: -- be my first witness with this stuff  
4 happening.

5 MS. DIBIANCA: Right.

6 MS. SHIKUNOV: So, no, Ms. --

7 MS. DIBIANCA: Just to take some pressure off of her.

8 MS. SHIKUNOV: -- Brady is here and was prepared to  
9 go today, so my instinct is to -- Ms. Brady and Mr. Ebert will  
10 be here.

11 MS. DIBIANCA: Yeah. That way you have some more  
12 time.

13 MS. SHIKUNOV: I would rather get the two of them out  
14 of the way before --

15 MS. DIBIANCA: Yeah.

16 MS. SHIKUNOV: -- her.

17 MS. DIBIANCA: I agree.

18 THE COURT: Okay.

19 PARTICIPANT: Just wanted a timeframe. Okay.

20 THE COURT: I'm sorry. It's still a bit contingent,  
21 but we only -- all of us only learned over the weekend that --  
22 that this would be necessary. And I'm confident we'll get  
23 there, just it may take a little bit of patience.

24 MS. DIBIANCA: Counsel and I did have a conversation  
25 earlier today. I did express my concern that we are going to

1 be running so far over. Counsel is going to -- Plaintiff's  
2 counsel is going to call Dr. Pipes, have some cross, so I  
3 suspect that won't be 'til Wednesday. And then we still have  
4 our witnesses to put up, so I -- I don't say that for any  
5 reason other than so that the Court isn't feeling like we're --  
6 that it's being caught off guard with the jury.

7 I do not want to keep the jury longer than Wednesday.  
8 That's not a way to make a jury happy, so I don't want that to  
9 occur. But I want to raise, you know, our Delaware public  
10 trial clock is calculating in my mind. So just to put that out  
11 there, that we're --

12 THE COURT: I appreciate that.

13 MS. DIBIANCA: -- where we are.

14 THE COURT: And it has crossed my mind, and I  
15 wouldn't be surprised if the jury is doing some math in their  
16 head, too. They heard the opening statements, and Chief Stein  
17 said, "Give an overview of what witnesses to expect." And  
18 they're probably counting how many we have done and how many we  
19 have to go as well. We're going to do it -- we're going to  
20 give it our best effort.

21 They've been -- as I said to them today, they've -- I  
22 mean, they've been an excellent --

23 MS. DIBIANCA: Yeah.

24 THE COURT: -- panel and prompt and super attentive  
25 and --

1 MS. DIBIANCA: Maybe we could start on -- at 9:00 the  
2 following day? I don't remember -- I don't have my list of  
3 where people are driving from, but maybe that's one option.  
4 That's half an hour. You know, it's not much, but just a  
5 thought.

6 MS. SHIKUNOV: But it can make all the difference,  
7 because a half an hour each day adds up.

8 MS. DIBIANCA: Right.

9 THE COURT: Right.

10 MS. DIBIANCA: Just a thought.

11 THE COURT: Okay.

12 MS. DIBIANCA: Just trying to put something out there  
13 for --

14 THE COURT: We can discuss it.

15 MS. DIBIANCA: -- ideas.

16 THE COURT: Good. Counsel, you'll probably remember  
17 from jury selection there's one amongst the panel that --

18 MS. DIBIANCA: Friday.

19 THE COURT: -- suggested that Thursday night would be  
20 cutting it very close for some travel he has.

21 If and when we get to that point, we may -- we may  
22 need to speak to him.

23 MS. DIBIANCA: Yep.

24 THE COURT: Okay.

25 MS. DIBIANCA: We recall that.

1                   THE COURT: All right. Thank you. Thank you,  
2 counsel. I know it has been a busy day, so -- and you probably  
3 have some more work ahead of you this evening. So thank you  
4 very much. Take care. Safe travels.

5                   (Whereupon, the above-entitled matter went off the  
6 record at 5:23 p.m.)

7

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\* \* \* \* \*

9



C E R T I F I C A T E

I, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.



August 3, 2021

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1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)